

# A Report on Special Education Due Process Hearings in Iowa



July 1, 1989 — June 30, 2001

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## Foreword

The Bureau of Children, Family and Community Services, Iowa Department of Education (formally known as the Bureau of Special Education), has collected data regarding special education due process hearings from the time hearings were first available. For example, data show that the first special education hearing in Iowa under the authority of P.L. 94 -142 and its final regulations (August 23, 1977) was held on April 5, 1978. The purpose of collecting data has been to provide the department with information from basic facts (e.g., the number of hearings held in a year) to more complex data to determine trends and implications for future activities, such as state inservice needs.

The data collection and reporting system used over the years typically has provided information in an informal manner. At both the state and national level more questions were being asked of the state department regarding the special education arena. The bureau started to devise ways to collect additional data from the hearings. As the special education administrative law judges (ALJs) and the mediators appointed by the state held quarterly inservice training, the desire to improve the entire system of dispute resolution dominated the topics of discussion. More and more in-depth questions were being asked; some were easily answered, others required reviewing individual case files. In an effort to streamline the process, a doctoral student assisted in providing a thorough analysis of the data.

After the doctoral student disseminated the initial information to the ALJs and mediators, the state was involved in a self-assessment as part of its monitoring obligations under the guidance of the U.S. Office of Special Education Programs (OSEP). The report was shared during that process with multiple groups and the findings proved to be helpful.

The decision was made to both disseminate the information more widely and add additional information to benefit those who would read the report. The department was encouraged to publish information more regularly, perhaps patterning the hearing document after the *Iowa Condition of Education* report. In response to the need, this publication is now available to the general public.

Thank you in advance for reading this report. Feedback comments and suggestions regarding this report are encouraged. Please direct them to the following:

Consultant, Special Education Consumer Relations  
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People without information cannot act.  
People with information cannot help but act.  
—Ken Blanchard

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# Introduction

In special education programs, as in all educational programs, the shared goal of parents and educators is to serve the best interests of the child. At times, however, there arise disagreements over what are, in fact, the best interests of the child, and what types of programs, services, and methodologies should be employed to attain them. At such times several options are available for parents and educators to resolve disputes.

In Iowa, parents, local school districts or area education agencies (AEAs) may choose any of five different methods to resolve differences about a student's special education services: preappeal conference, complaint, mediation, hearing, or the use of a Resolution Facilitator.

One option for dispute resolution is a preappeal conference, a form of mediation obtained through the state. This conference is voluntary for all parties and is available prior to filing a request for a due process hearing. The goal is for all parties to come to agreement by working together. The desired result is a written agreement that is acceptable to all parties.

At the discretion of the local district or AEA, a "Resolution Facilitator" may be used to help settle differences between parties. This process is similar to the preappeal conference, except that it may be used prior to contacting the Department of Education. Each AEA has a designated Resolution Facilitator contact.

Another option for dispute resolution is mediation (and is required to be available under the Individuals with Disabilities Education Act (IDEA)). Unlike the use of a Resolution Facilitator process or a preappeal conference, mediation becomes available only after a request is filed for a due process hearing. As with the preappeal conference and the Resolution Facilitator process, mediation is a voluntary process that focuses on enabling the parties to work together for a mutually agreeable solution.

If none of these options is successful in resolving the dispute, or if the parties in the dispute choose not to utilize these options, a due process hearing may be requested. (This option is required under IDEA.) An administrative law judge (ALJ) will be assigned to hear the issues involved in the dispute and render a decision. The decision of the ALJ is binding.

If an individual or an organization believes that a district or AEA has violated a requirement of the Iowa special education rules, the individual or organization may file a formal complaint with the Iowa Department of Education. (This option is required under IDEA.) The state must carry out an independent investigation of the complaint within 60 calendar days of filing.

The information in this report applies primarily to due process hearings in the state of Iowa. A parent may request a due process hearing when the educational agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student; or when the parent believes that a free appropriate public education (FAPE) is not being provided by the



educational agency. In addition, a public agency may initiate hearing procedures to determine if the student may be evaluated or initially provided special education and related services without parental consent. Thus, disputes that may result in a request for a due process hearing are those that involve the issues of identification, evaluation, placement, or provision of FAPE (34 C.F.R. §300.507, 281 IAC 41.113(1)).

The provision of FAPE, however, may itself be comprised of many separate issues of concern. For example, disputes may arise over appropriate transportation for a student with a disability, the particular methodology used to instruct the student, or the amount of integration opportunities available to the student. Any of these scenarios, as well as many others, could be conceived as a violation of the requirement to provide FAPE. For the purposes of the present analysis, it was felt that specific individual issues provided important information that could not be ascertained under the more general issue of provision of FAPE. Thus, for the purposes of this analysis, the provision of FAPE has been further classified into issues of related/support services, the contents of individualized education program (IEP), procedural safeguards, methodology, extended school year services (ESY services), graduation, and suspension/expulsion. It should be noted that a due process hearing might involve any number and combination of these issues.

The analysis of due process hearings in Iowa provides valuable information regarding the particular issues raised in a hearing, the prevailing party on individual issues, student characteristics such as gender, age, and disability, and other pertinent facts. Such information provides a great deal of insight into the types of disputes occurring. This information can shed light on areas where disagreements between parents and educational agencies are most numerous or most difficult to resolve, thus allowing for analysis of the areas where better communication, procedures, or training is needed.

The purpose of the present analysis is to provide such information about due process hearings in the state of Iowa. The research presented here focuses on due process hearings in the state from July 1, 1989, through June 30, 2001.

The hearing decisions were written by the ALJ assigned to the case and reported to the Iowa Department of Education.

# Definitions

**AREA EDUCATION AGENCY** or AEA is an intermediate educational unit created by *Iowa Code* Chapter 273. According to Iowa Regulations (281 IAC 41.113), the appropriate AEA serving the individual shall be deemed to be a party with the local education agency (LEA) whether or not specifically named by the parent or agency filing the appeal. Therefore, in this analysis the AEA and LEA are grouped together.

**DISABILITY** refers to the most recent primary disability of the child at the time of the request for a due process hearing. At times, the identification of the disability is the area of dispute; however, the current disability category is used in this analysis. Occasionally, a child has not yet been identified as a child with a disability and the initial identification is the issue in the due process hearing. In such instances, the disability is labeled as “not yet identified” for purposes of this analysis.

**LOCAL EDUCATION AGENCY** or LEA is a public or nonpublic organization that offers special education and related services in one or more disability areas. Generally, this is the local school district (34 C.F.R. §300.2, 281 IAC 41.5).

**PREAPPEAL CONFERENCE** is a voluntary special education mediation process unique to Iowa. A party can request a preappeal without asking for a hearing by contacting the Iowa Department of Education. A neutral, trained mediator will be assigned to the case. The mediator will (1) facilitate open communication between the participants; (2) help create a safe environment, allowing parties to interact and understand each other's point of view; (3) clarify points of agreement and disagreement; and (4) assist with writing the terms of the agreement.

**SCHOOL LEVEL** is the approximate level of school the child attended at the time of the request for hearing. Early childhood refers to special education and related services for those individuals below the age of six (281 IAC 41.5). Elementary school refers to students in grades 1-5. Middle school/junior high school refers to students in grades 6-8. High school refers to students in grades 9-12.

**STUDENT AGE** and **STUDENT GRADE** are the age and grade of the student when the request for a hearing was initiated. In some instances, the child is in an ungraded program, or the age and grade are not available in the case decision.

**YEAR OF DUE PROCESS HEARING** is the state fiscal year (July 1—June 30) in which a decision was rendered. In instances where the hearing was requested in one fiscal year but decided in another, the year will be that in which the hearing decision was rendered.

### **Issues in the due process hearing:**

- **Evaluation** refers to an individual evaluation of the individual's educational needs, including an objective definition of the presenting problem, analysis of existing information about the individual, identification of the individual's strengths, and collection of additional information needed to design interventions intended to resolve the presenting problems (281 IAC 41.48(3)).
- **Extended school year services** (ESY services) refers to special education and related services that are provided to an eligible individual beyond the normal school year of the public agency in accordance with the eligible individual's IEP at no cost to the parents (281 IAC 41.80(1)).
- **Graduation** refers to the award of a regular high school diploma (34 C.F.R. §300.122(a)(3)).
- **Identification** refers to the determination that a student is an individual with a disability and as a result requires special education and related services.
- **IEP contents** refers to the individualized education program of the student. The IEP must be in effect before special education and related services are provided to an eligible individual. In the present analysis, the issue of IEP contents refers to disputes over the specific contents of the IEP. The required contents of the IEP are: a statement of the eligible individual's present levels of educational performance; a statement of measurable annual goals and short-term objectives; a statement of the special education and

related services, supplementary aids and services to be provided; a statement of the program modifications or supports for school personnel that will be provided; an explanation of the extent, if any, to which the eligible individual will not participate with nondisabled individuals in the general class; a statement of any individual modifications in the administration of district-wide assessments of student achievement that are needed; the projected date for the beginning of services and modifications, and the anticipated frequency, location, and duration of those services and modifications; and a statement of how the eligible individual's progress toward the annual goals will be measured and communicated to parents (281 IAC 41.67). There are also transition service requirements for each individual beginning at the age of 14 (or younger if deemed appropriate) and for those 16 and older.

- **Methodology** refers to the specific instructional techniques and materials utilized by instructional staff in an effort to achieve the goals and objectives outlined in the IEP.
- **Placement/least restrictive environment** refers to the policy that to the maximum extent appropriate to the needs of the eligible individual, special education and related services shall be designed and delivered so that eligible individuals are educated with those who are nondisabled (281 IAC 41.37). Special classes, separate schooling or other removal of eligible individuals from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 C.F.R. §300.550(b), 281 IAC 41.37(2)).
- **Procedural safeguards** refers to the full range of procedural safeguards available to the parents of a child with a disability. A list of these must be given to the parents upon initial referral for evaluation, upon each notification of an IEP meeting, upon reevaluation of the child, and upon receipt of a request for due process. Procedural safeguards include the right to an individual educational evaluation, prior written notice, parental consent, access to educational records, opportunity to initiate due process hearings, the individual's placement during due process proceedings, procedures for eligible individuals who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by parents of eligible individuals in private schools at public expense, mediation, due process hearings, civil actions, attorneys fees, and state complaint procedures.
- **Related/support services** refers to transportation and such developmental, corrective, and other supportive services as are required to assist an eligible individual to benefit from special education (281 IAC 41.94). Related/support services also refers to supplementary aids and services provided in order for an eligible individual to be served in the general education classroom environment, or other education-related settings to enable the individual to be educated with nondisabled individuals to the maximum extent appropriate.
- **Suspension/expulsion** refers to the unilateral removal of an eligible individual from the current educational placement for disciplinary reasons.

# Section 1

## General Hearing Information

This section offers information on the options available in the State of Iowa for resolving disputes about a student's special education services. These options are described in detail on page 3 of this report. Information is also presented regarding the details of due process hearings held in Iowa, including the party initiating the request for a due process hearing, the issues named, and the prevailing party on each, the length of time required to complete a hearing, percentage of hearings occurring within each AEA, and attorney information.

Table 1 and Figure 1 indicate the types of dispute resolutions available for parents of children in special education programs in the state of Iowa from 1989-2001, and the number of times each was utilized. Of particular interest is the general decrease, over this time period, in the number of due process hearings requested and held, with a corresponding increase in the number of requests for a preappeal conference. During the 2000-2001 school year, all types of dispute resolution declined with the exception of hearings held and complaints filed.

**Table 1**

### Special Education Hearings, Preappeals, Mediations, and Complaints July 1, 1989 — June 30, 2001

Type of Resolution Available	1989-1990	1990-1991	1991-1992	1992-1993	1993-1994	1994-1995	1995-1996	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001
Hearings Requested	18	19	32	25	31	30	23	12	17	7	11	10
Hearings Held	7	3	6	5	5	6	4	2	2	3	3	4
Mediations Held	8	12	13	8	7	21	5	5	7	1	3	0
Preappeals Filed	13	8	8	7	5	12	30	34	36	34	55	34
Preappeals Held	7	8	1	4	1	10	18	22	13	20	34	21
Complaints Filed	39	29	14	10	13	12	2	2	2	9	4	7
Complaints Investigated*								1	1	8	3	3

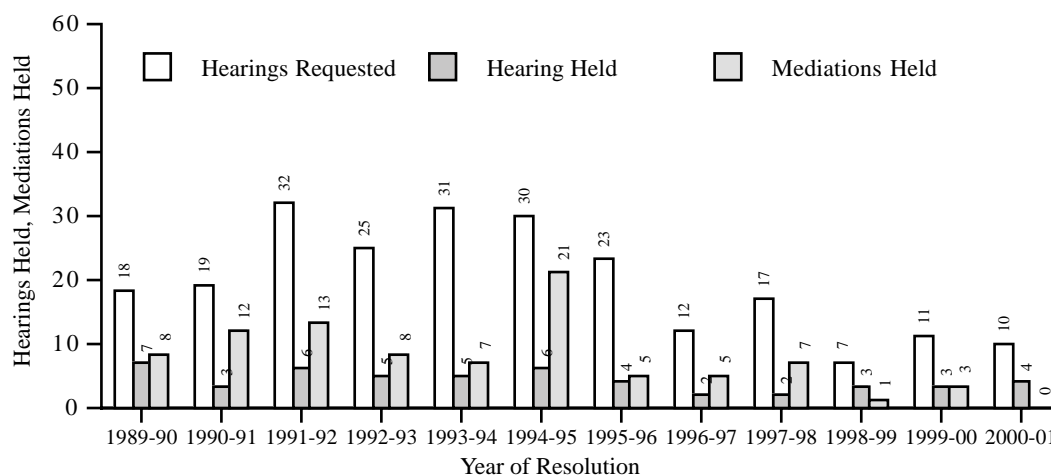
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**\*Note:** The state did not differentiate a distinction between complaints filed and those that were investigated prior to 1996.

Historically, a greater number of hearings were requested than actually were held. Whenever a request for a hearing is received, all parties are asked whether they will consent to mediation first. If the parties consent, the mediation will usually result in a request for a hearing to be cancelled. In addition, after a party has filed for a hearing, it is not uncommon for parties to work out their differences, without mediation or a decision from an ALJ. If an agreement is reached, the filing party will ask for a dismissal.

**Figure 1**

**Hearings Requested, Hearings Held & Mediations Held  
July 1, 1989 — June 30, 2001**



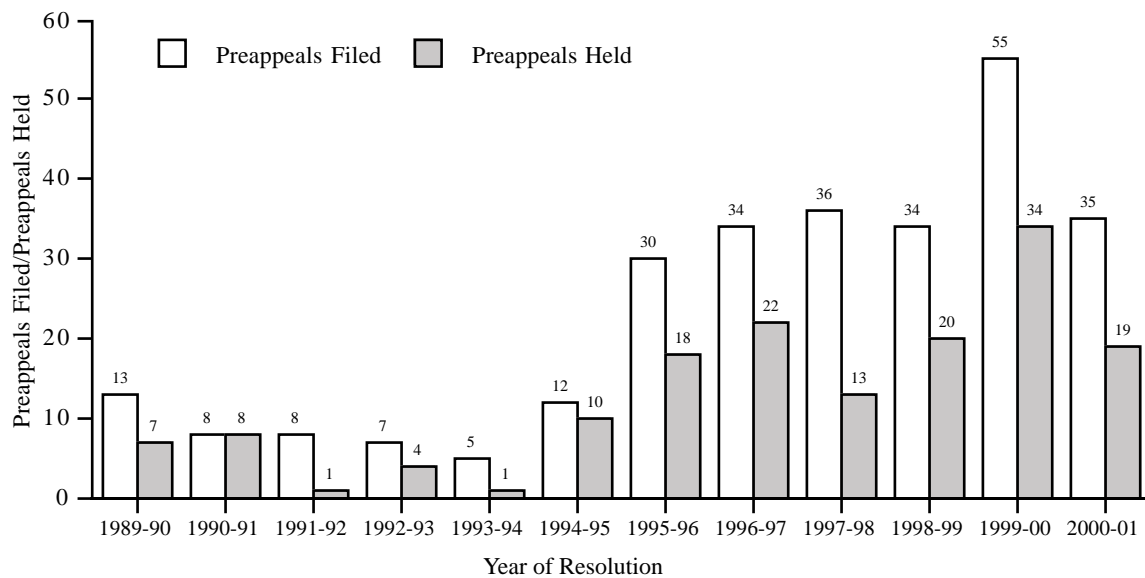
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

The preappeal conference was an informal mediation process offered by the state for many years. However, in July 1995, the process was included in the *Iowa Administrative Code*, and the special education rules outlined that although the preappeal was a voluntary process, if all parties agreed to participate, the “stay put” provision would be in effect. Starting with the 1995-96 period, the number of preappeal requests increased.

Historically, as is common with the requests for hearings, more preappeals were requested than were actually held. Again, it is not uncommon for differences to get resolved after a preappeal request is made, which then will result in the party initiating the filing to ask for a dismissal of the preappeal.

**Figure 2**

**Preappeals Filed and Preappeals Held  
July 1, 1989 — June 30, 2001**

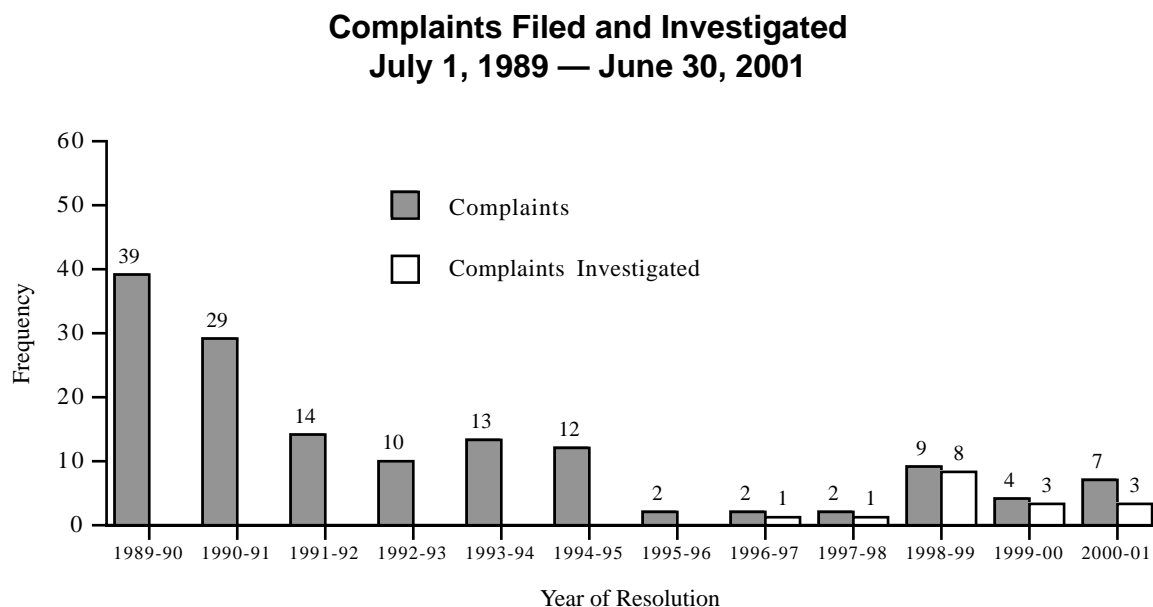


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

If an individual believes that the district or AEA is violating the Iowa Administrative Rules of Special Education, a written complaint may be filed with the Iowa Department of Education. The Department of Education must review, investigate, and act on the complaint within 60 calendar days of the receipt of the complaint. Figure 3 shows the number of complaints filed with the Department of Education each year. The number of complaints filed has declined, markedly, from a high of 39 complaints in the 1989-90 school year to 7 during the 2000-01 school year.

The state data system for recording complaints from 1989-90 until 1995-96 did not differentiate between whether the complaint was investigated or not. If a complaint arrived, it was counted as a complaint. However, there were times that complaints were not investigated based on the following: (1) the filing party asked for a dismissal because differences got resolved; (2) the filing party decided to use the preappeal conference instead of the complaint process; or (3) the written complaint did not meet the criteria for a complaint. In 1996, the state decided to count the number of complaints that were filed, as well as those that were actually investigated.

**Figure 3**

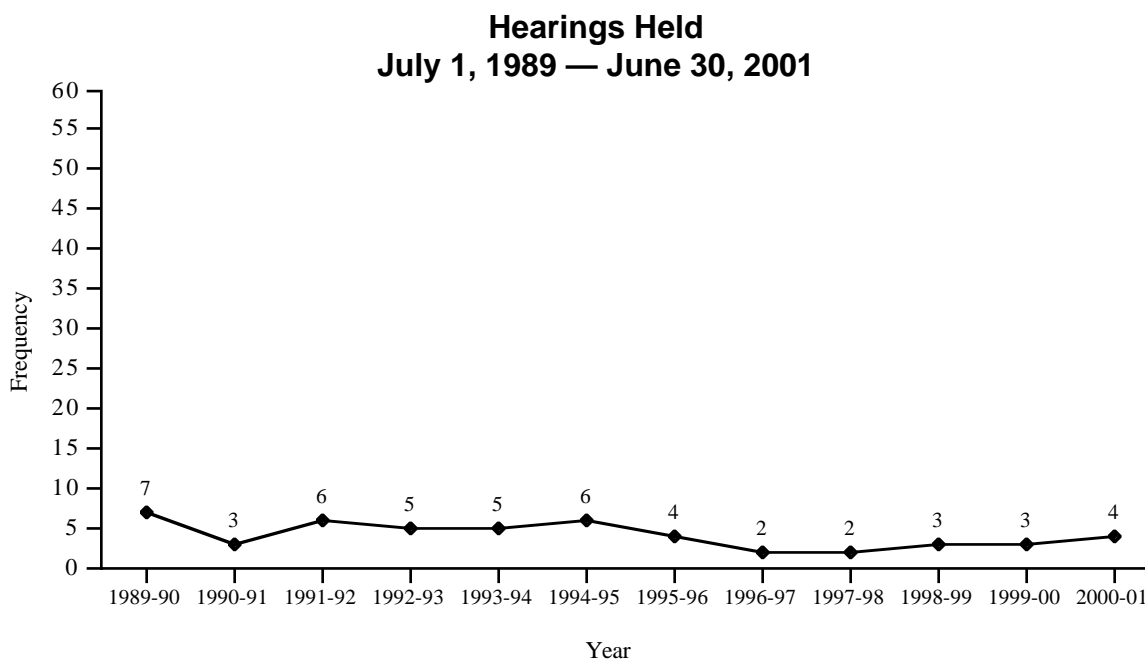


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**\*Note:** The state did not differentiate a distinction between complaints filed and those that were investigated prior to 1996.

Figure 4 shows the distribution of hearings held over the time period reviewed.

**Figure 4**

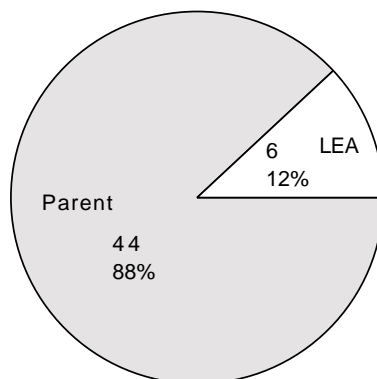


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 5 indicates the appellant in the hearing; that is, the party who initiated the request for the due process hearing. In most cases (88 percent) the parent of the student initiated the hearing. In 12 percent of the hearings, it was the local school district (local education agency, or LEA) that initiated the request for a hearing. This generally occurred when schools attempted to obtain permission for initial evaluation or initial placement.

**Figure 5**

**Party Filing Request for Hearings Held  
July 1, 1989 — June 30, 2001**

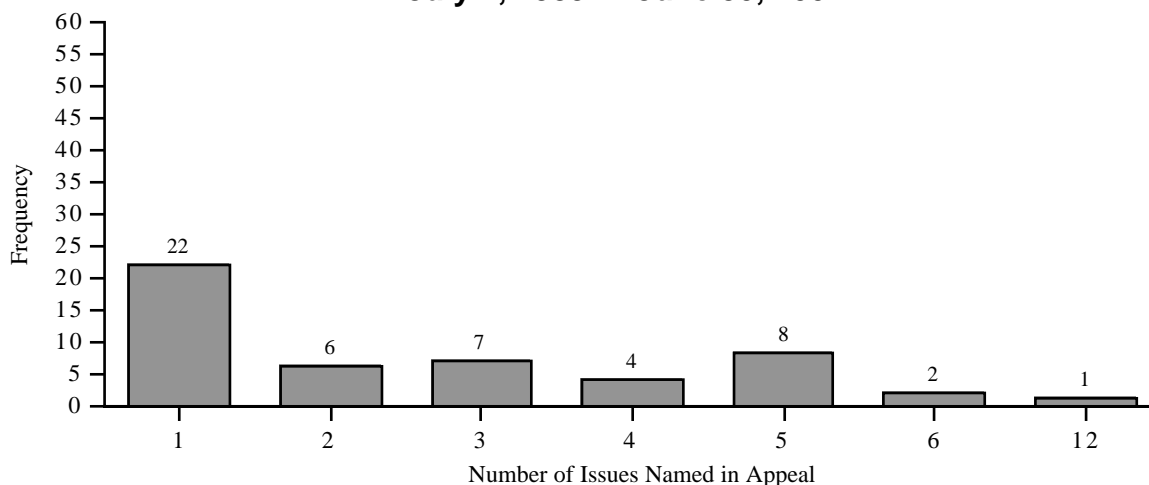


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 6 indicates the number of issues named in requests for due process hearings. In most cases (22 cases, 44 percent) only one issue was named in the request. Frequently, more than one issue was named. Occasionally the same type of issue was named more than once in the same hearing request because the same issue was identified in different contexts or with different details, and so was named multiple times in the same hearing.

**Figure 6**

**Number of Issues Named in Hearings  
July 1, 1989 — June 30, 2001**



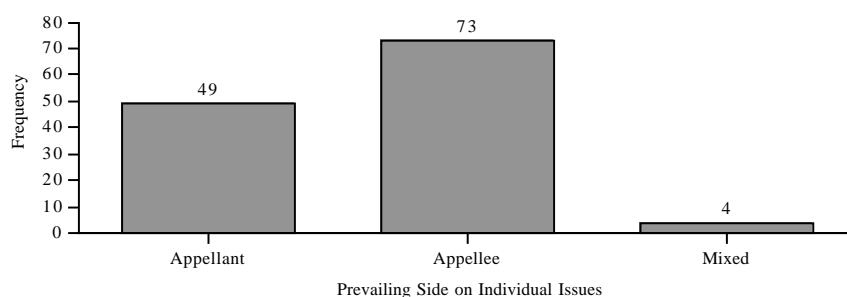
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.



Fifty-six percent of the due process hearings involved more than one issue. In some instances the prevailing side differed for each issue. Figure 7 shows the prevailing side by appellant or appellee on individual issues named in the due process hearings. The party requesting the hearing (appellant) prevailed on 38.9 percent of the total issues (49 of the 126) named in hearings over this time period. The party against whom the hearing was brought (appellee) prevailed 57.9 percent (73 of 126). The decision on four of the issues was mixed. This is because the four issues were particularly complicated and the decision of the ALJ partially favored the appellant and partially favored the appellee.

**Figure 7**

**Prevailing Side on Individual Issues by Appellant or Appellee  
July 1, 1989 — June 30, 2001**

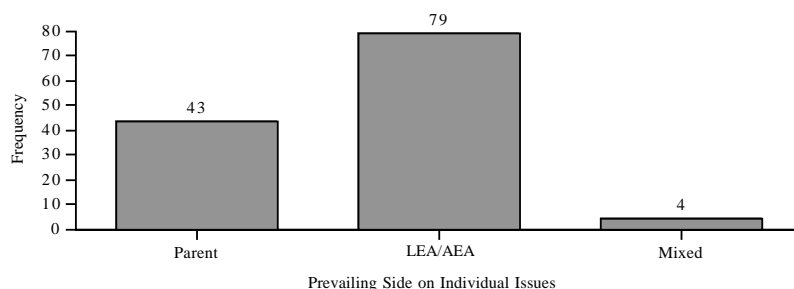


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 8 shows the prevailing party on individual issues named in the due process hearings by parent or LEA/AEA. The local education agency (usually the school district) prevailed most often, 79 of 126 issues named (62.7 percent). The parent prevailed on 43 of 126 issues (34.1 percent). The decision on four of the issues was mixed. This is because these four issues were particularly complicated, and the decision of the ALJ partially favored the parents and partially favored the local education agency.

**Figure 8**

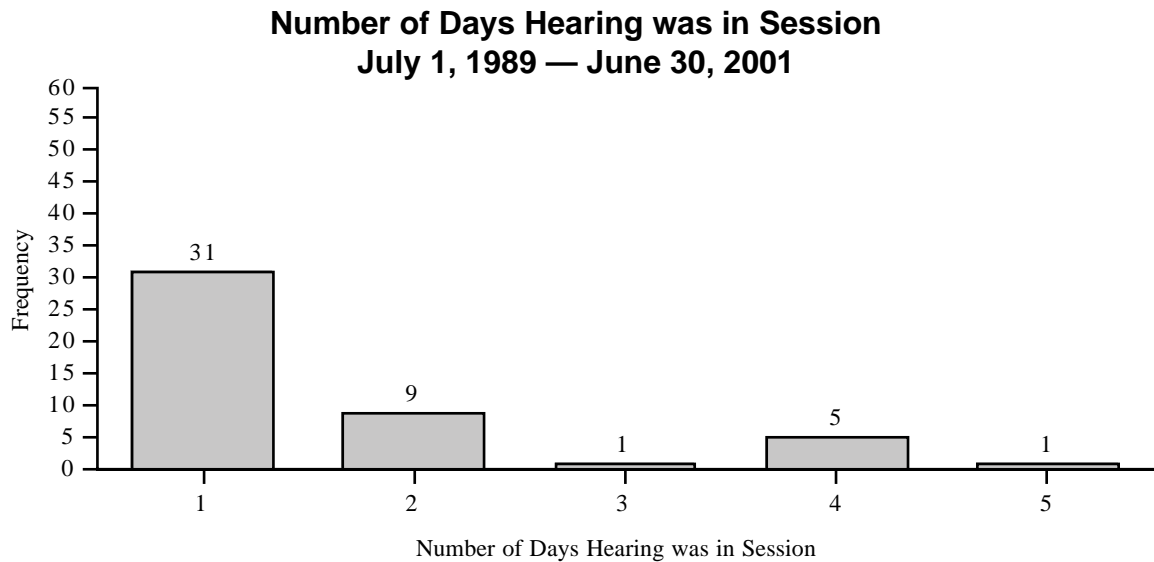
**Prevailing Party on Individual Issues by Parent or LEA/AEA  
July 1, 1989 — June 30, 2001**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 9 indicates the number of days the hearing was actually in session. In most cases, hearings are in session during one day (62 percent of all hearings), one hearing required five days to be heard (two percent of all hearings).

**Figure 9**

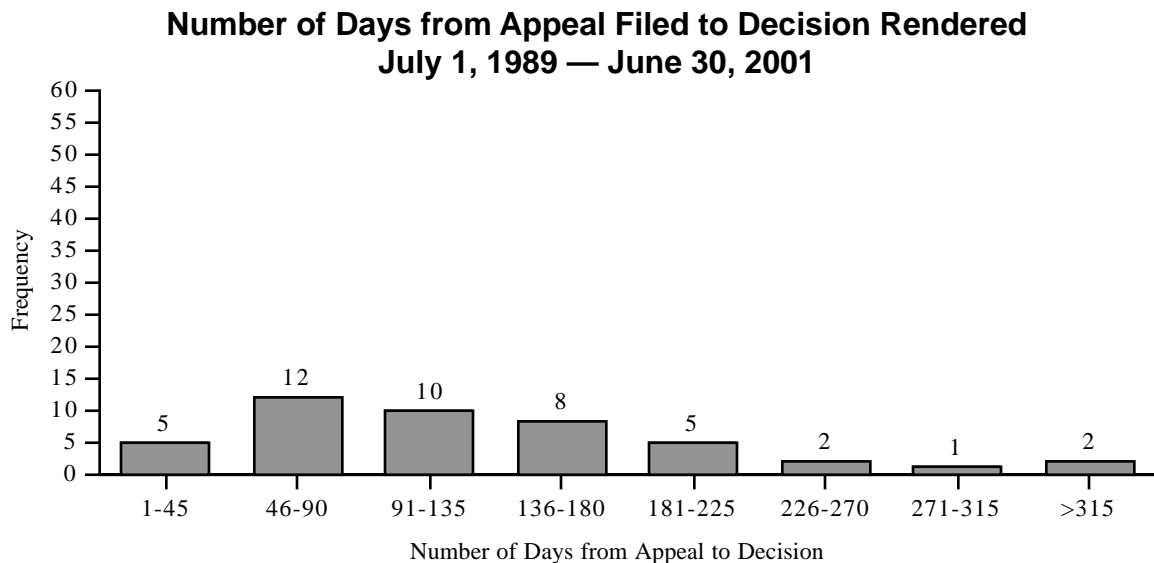


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Note:** On three cases, data were missing.

Figure 10 indicates the length of time from the filing of the request for a due process hearing until a decision is rendered. Although IDEA requires the due process hearings to be completed within 45 calendar days of the original appeal, continuances can be granted to extend this time period, if necessary. In actual practice, only five of the cases (10 percent) were actually completed within this time frame. Most of the cases (30 cases, 60 percent) took between 46 and 180 days to render a decision, with some taking longer periods of time.

**Figure 10**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

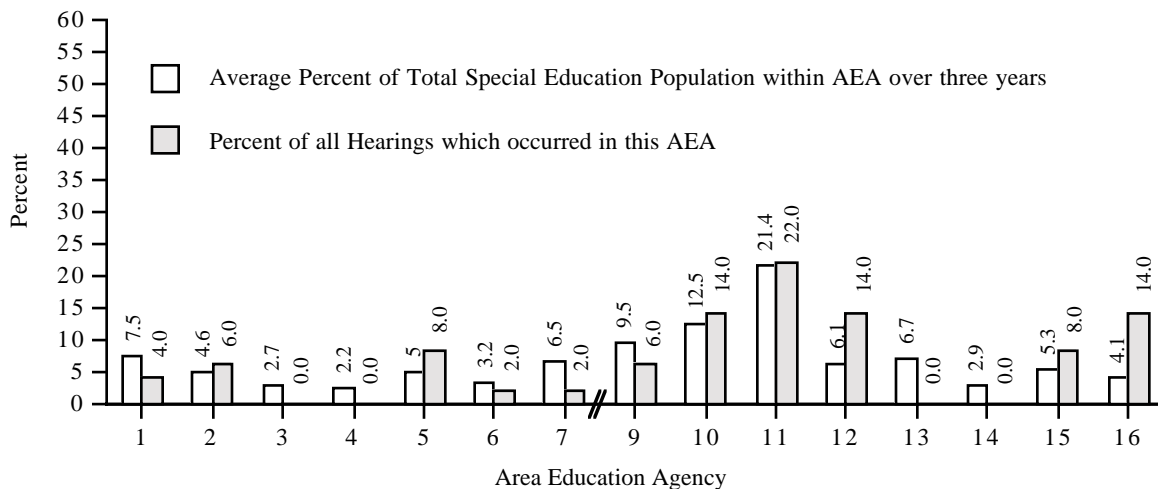
**Note:** On five cases, data were missing.

Figure 11 provides information about the percentage of due process hearings that occurred within each AEA. The figure compares the percentage of all special education students served by the particular AEA with the percentage of all due process hearings occurring in the AEA.

**Figure 11**

### Hearings in AEA as a Function of Special Education Population Hearings July 1, 1989 — June 30, 2001

Based on Average Special Education Population  
December 1, 1998 — December 2, 2000



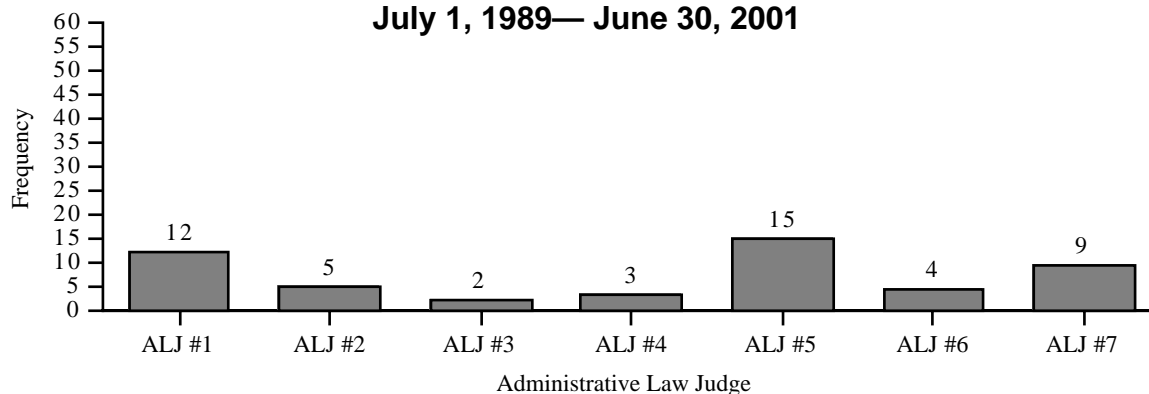
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Note:** There is no AEA 8.

Figure 12 shows the number of times a particular ALJ was assigned to a due process hearing over the time period reviewed. It should be noted that each ALJ has been under contract to perform this service for differing lengths of time. For example, the present four ALJs have served since 1986, 1988, 1989, and 1999. This chart shows the number of hearings each ALJ rendered a due process hearing decision. Because the number of hearings held each year in Iowa is low, most ALJs preside over few due process hearings.

**Figure 12**

### Administrative Law Judge Assigned to Due Process Hearing July 1, 1989— June 30, 2001



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Table 2 shows the number of cases heard by each ALJ over this time period. The ALJs are assigned by the State Director of Education on a rotating basis. At times, the ALJ will decline to hear the due process hearing because of scheduling conflicts or because the ALJ is personally or professionally involved with the parties. In general, the ALJ assignments should be equally distributed among the ALJs under contract with the Department of Education for that particular year. As was explained earlier, a greater number of hearings are requested than held. For various reasons, the filing party may request a dismissal. Even though ALJs will be assigned cases, few will go forward as hearings requiring an ALJ decision.

**Table 2**

**Number of Cases Per Administrative Law Judge by School Year  
July 1, 1989 — June 30, 2001**

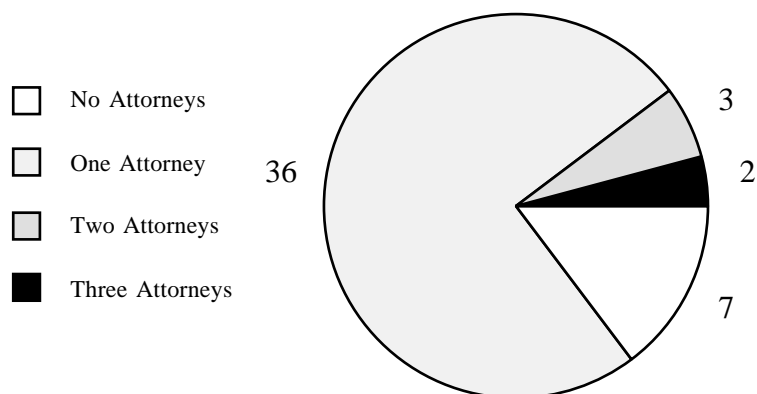
<b>Year Appeal Was Decided</b>	<b>ALJ #1</b>	<b>ALJ #2</b>	<b>ALJ #3</b>	<b>ALJ #4</b>	<b>ALJ #5</b>	<b>ALJ #6</b>	<b>ALJ #7</b>	<b>Total Cases Per Year</b>
1989-90	1	0	1	0	2	0	2	<b>6</b>
1990-91	1	1	0	0	2	0	0	<b>4</b>
1991-92	2	2	0	0	1	0	1	<b>6</b>
1992-93	3	0	0	0	1	0	1	<b>5</b>
1993-94	1	0	1	0	1	1	1	<b>5</b>
1994-95	2	0	0	0	3	1	0	<b>6</b>
1995-96	0	1	0	0	2	0	1	<b>4</b>
1996-97	0	0	0	0	1	1	0	<b>2</b>
1997-98	0	0	0	0	2	0	0	<b>2</b>
1998-99	1	0	0	0	0	1	1	<b>3</b>
1999-00	0	1	0	1	0	0	1	<b>3</b>
2000-01	1	0	0	2	0	0	1	<b>4</b>
<b>Total Cases</b>								
<b>Per ALJ</b>	<b>12</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>15</b>	<b>4</b>	<b>9</b>	<b>50</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 13 shows the number of attorneys representing the student's parent during the due process hearing. In most cases, the parent is represented by one attorney (72 percent of the cases). In seven cases (14 percent) the parent is not represented by an attorney. Very infrequently, the parent is represented by more than one attorney.

**Figure 13**

**Frequency of Attorneys Representing Parents  
July 1, 1989 — June 30, 2001**



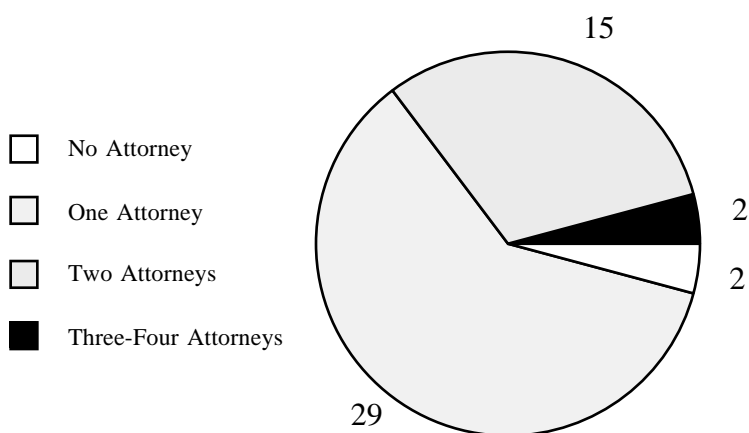
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Note:** On two cases, data were missing.

Figure 14 shows the number of attorneys representing the LEA and AEA during the due process hearing. In most cases, the LEA/AEA was represented by one attorney (58 percent of the cases) or two attorneys (30 percent of the cases). Very infrequently, the AEA or LEA may have been represented by more than two attorneys. In two cases (4 percent of the cases), the AEA/LEA is not represented by any attorney.

**Figure 14**

**Number of Attorneys Representing LEAs and AEAs  
July 1, 1989 — June 30, 2001**



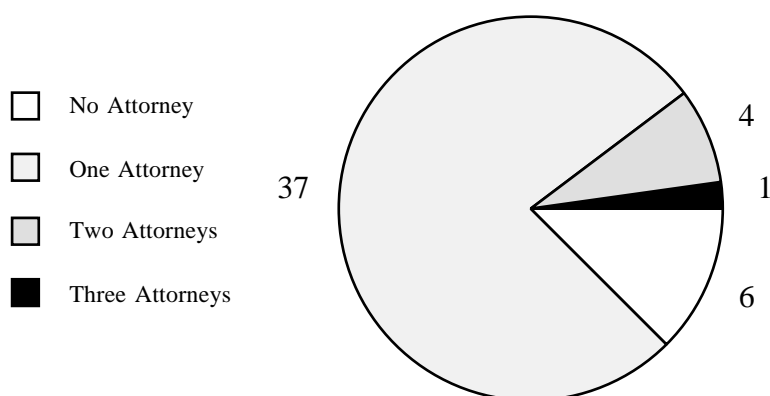
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Note:** On two cases, data were missing.

Figure 15 shows the number of attorneys representing the appellants (the party requesting the hearing) during the due process hearing. In most cases, the appellant is represented by one attorney (74 percent of the cases). In six cases (12 percent) the appellant was not represented by an attorney. Very infrequently, the appellant may have been represented by more than one attorney.

**Figure 15**

**Number of Attorneys Representing Appellant  
July 1, 1989 — June 30, 2001**

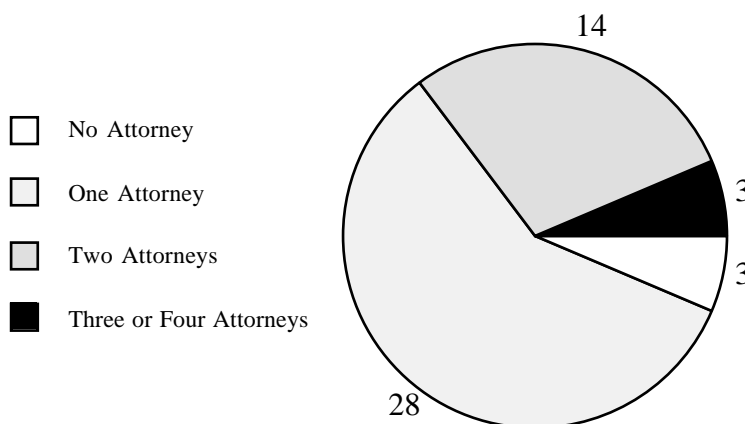


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 16 shows the number of attorneys representing the appellees during the due process hearing. In most cases, the appellee was represented by one attorney (56 percent of the cases) or two attorneys (28 percent of the cases). Very infrequently, the appellee may have been represented by more than two attorneys. In a small number of cases (three cases, 6 percent of cases), the appellee was not represented by any attorney.

**Figure 16**

**Frequency of Attorneys Representing Appellee  
July 1, 1989 — June 30, 2001**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Table 3, Figures 17 and 18 indicate the attorneys representing parties in due process hearings held from July 1, 1989, through June 30, 2001. Most of the attorneys representing the parents had little experience in due process hearings in Iowa, having only participated in one case (26 of 49 instances of legal representation, 53.1 percent). By contrast, in only 14 of 54 instances (26 percent) did the attorney representing the LEA/AEA have experience in only one due process hearing. More frequently, attorneys representing LEA/AEA had experience in more than one due process hearing, and sometimes as many as eight.<sup>1</sup>

**Table 3**

### Attorneys Representing Parties in Due Process Appeals

**July 1, 1989 — June 30, 2001**

<b>Attorney Code Letter</b>	<b>Parent Attorneys July 1, 1989 — June 30, 2001</b>	<b>LEA/AEA Attorney July 1, 1989 — June 30, 2001</b>
<b>Various Attorneys Representing Clients in One Appeal Only</b>	<b>26</b>	<b>14</b>
Attorney “N”	11	
Attorney “M”	6	
Attorney “C”	4	
Attorney “G”	2	
Attorney “A”		3
Attorney “B”		5
Attorney “D”		3
Attorney “Q”		2
Attorney “E”		4
Attorney “F”		7
Attorney “H”		2
Attorney “I”		6
Attorney “J”		3
Attorney “K”		2
Attorney “L”		8
Attorney “P”		2

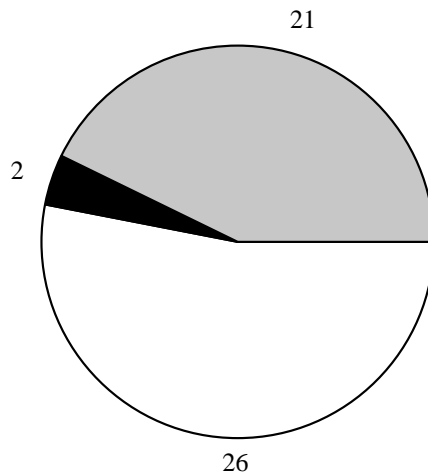
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

<sup>1</sup>NOTE: The total number of attorneys representing parents and LEA/AEA do not agree because parties may have more than one attorney or none at all.

**Figure 17**

**Parent Attorney Experience  
July 1, 1989 — June 30, 2001**

- ☐ Cases in which attorneys had experience in one hearing only
- ☒ Cases in which attorneys had experience in two or three hearings
- ☐ Cases in which attorneys had experience in more than three hearings

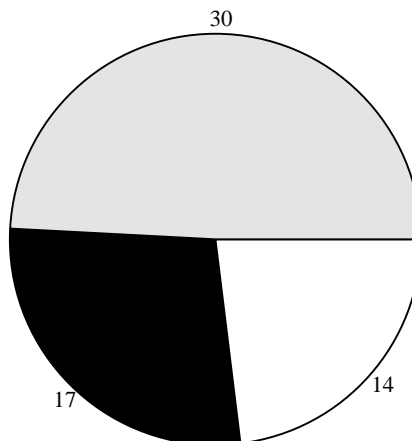


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Figure 18**

**AEA/LEA Attorney Experience  
July 1, 1989 — June 30, 2001**

- ☐ Attorneys with experience in one hearing only
- ☒ Attorneys with experience in two or three hearings
- ☐ Attorneys with experience in more than three hearings



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.



# Section 1 Summary

The number of hearings requested has declined over the time period examined. For example, during the five-year period from 1991-92 to 1995-96, 141 hearings were requested. During the next five-year block (1996-97 to 2000-2001) 57 hearings were requested, i.e., 84 fewer hearings were requested. The number of hearings held has also decreased: 26 during 1991-96 and 14 held during 1996-2001, for a decrease of 12 hearings. As hearings declined, the number of preappeal conferences requested increased. During the same five-year period noted above (1991-96), 62 preappeal conferences were requested, compared to 193 requested during the next five year span (1996-2001), an increase of 131.

Fifty hearings were held during the 12-year timeframe of this report, with 88 percent of these initiated by parents. Fifty-six percent of the hearings involved more than one issue, ranging from two to twelve issues per hearing for a total of 126 issues in dispute. Districts prevailed on 62.7 percent of the issues. Sixty-two percent of all hearings held were concluded in one day. The longest hearing held in Iowa lasted five days.

A hearing decision was rendered between 46 and 180 calendar days 60 percent of the time. Only 10 percent of the hearings were concluded within 45 calendar days.

Seven administrative law judges (ALJs) rendered decisions during the 12-year time period, with a range of two to fifteen decisions per ALJ, usually dependent on the number of years of experience of the ALJ.

Parents typically used an attorney (or attorneys) during a hearing, with 86 percent of the cases involving parent attorneys. Districts and/or AEAs were represented by attorneys 96 percent of the time. Forty-seven percent of attorneys representing parents had experience in more than one hearing, contrasted by 78 percent of attorneys representing the LEA/AEA with the same level of experience.

# Section 2

## Student Characteristics

This section presents information pertaining to the students involved in due process hearings that were held from 1989-2001. This data represents descriptive information regarding: gender, age, school level, and disability category.

Table 4 shows the gender of students involved in due process hearings. Male students are involved in due process hearings much more often than female students. Specifically, 74 percent of the due process hearings involved male students, while only 26 percent involved female students. This compares to a statewide distribution of the total 2001-02 special education population of 66 percent males and 34 percent females.

**Table 4**

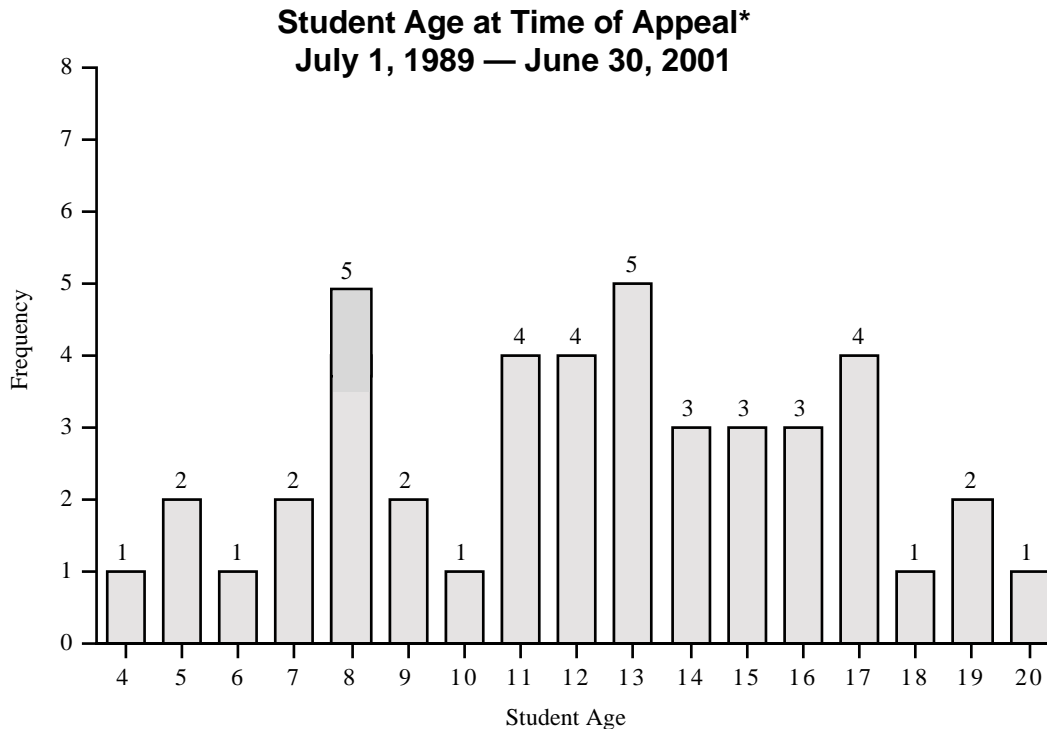
**Gender of Students Involved in Due Process Hearings  
July 1, 1989 — June 30, 2001**

Gender	Frequency	Percent
Male	37	74
Female	13	26
<b>TOTAL</b>	<b>50</b>	<b>100.0</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 19 indicates the age of the student at the time the request for hearing was filed.

**Figure 19**

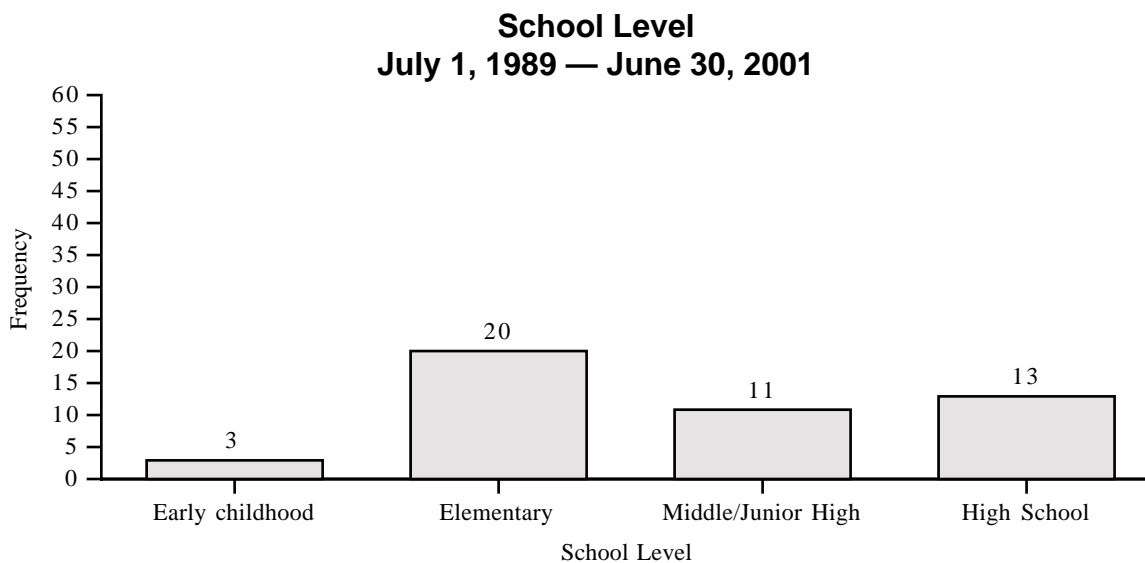


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**\*Note:** Six ages were not available.

Figure 20 shows the school level of the students involved in due process hearings. Very few due process hearings were held for students in early childhood programs (six percent of all hearings). There were no hearings for Part C (Early ACCESS) or Part H as Part C was once called (ages birth to three). Most requests were filed for students in elementary school (40 percent).

**Figure 20**

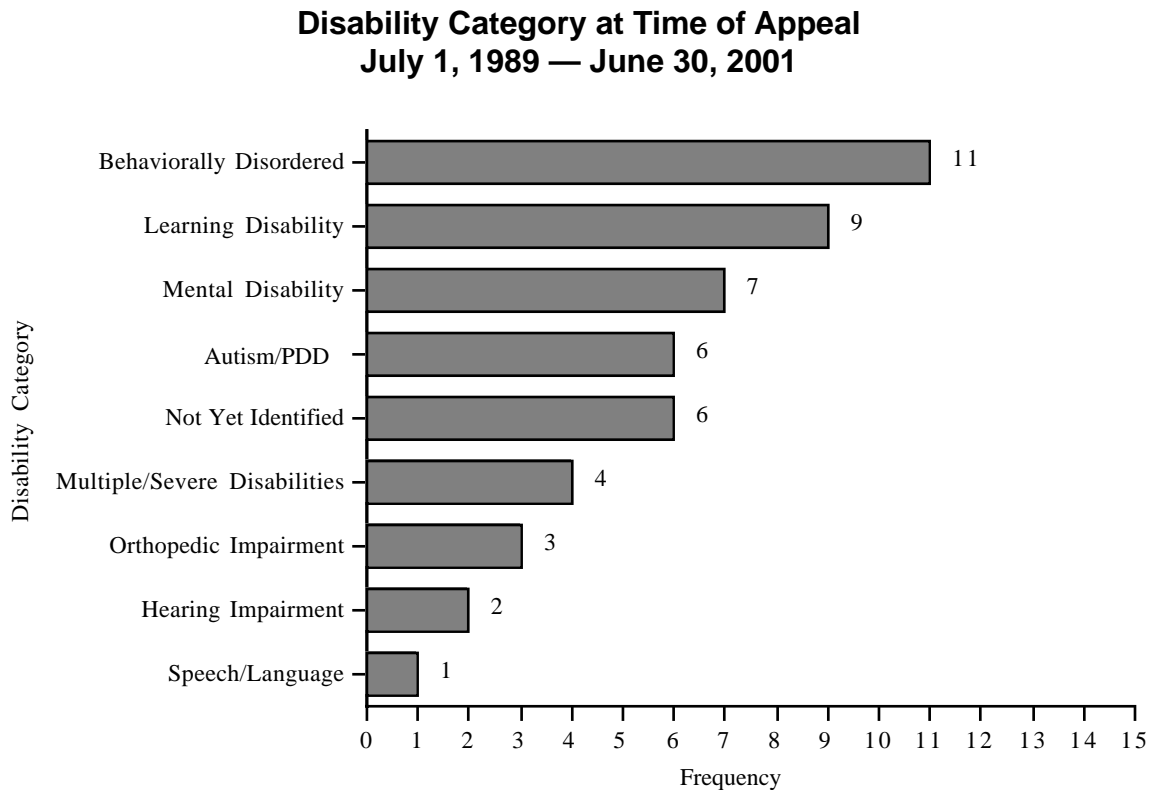


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Note:** On three cases, data were missing.

Figure 21 shows the number of due process hearings requested for students in particular disability categories. Students who were behaviorally disordered were most often involved in due process hearings, closely followed by students with learning disabilities. Students whose primary disability was speech or language impairment were involved in only one hearing over this time period. Students identified as having visual impairment, deaf-blindness, traumatic brain injury, or other health impairments were not involved in due process hearings at all during this time period. These categories were not necessarily a reflection of the disability category officially listed on the IEP, but based on the hearing decision information.

**Figure 21**



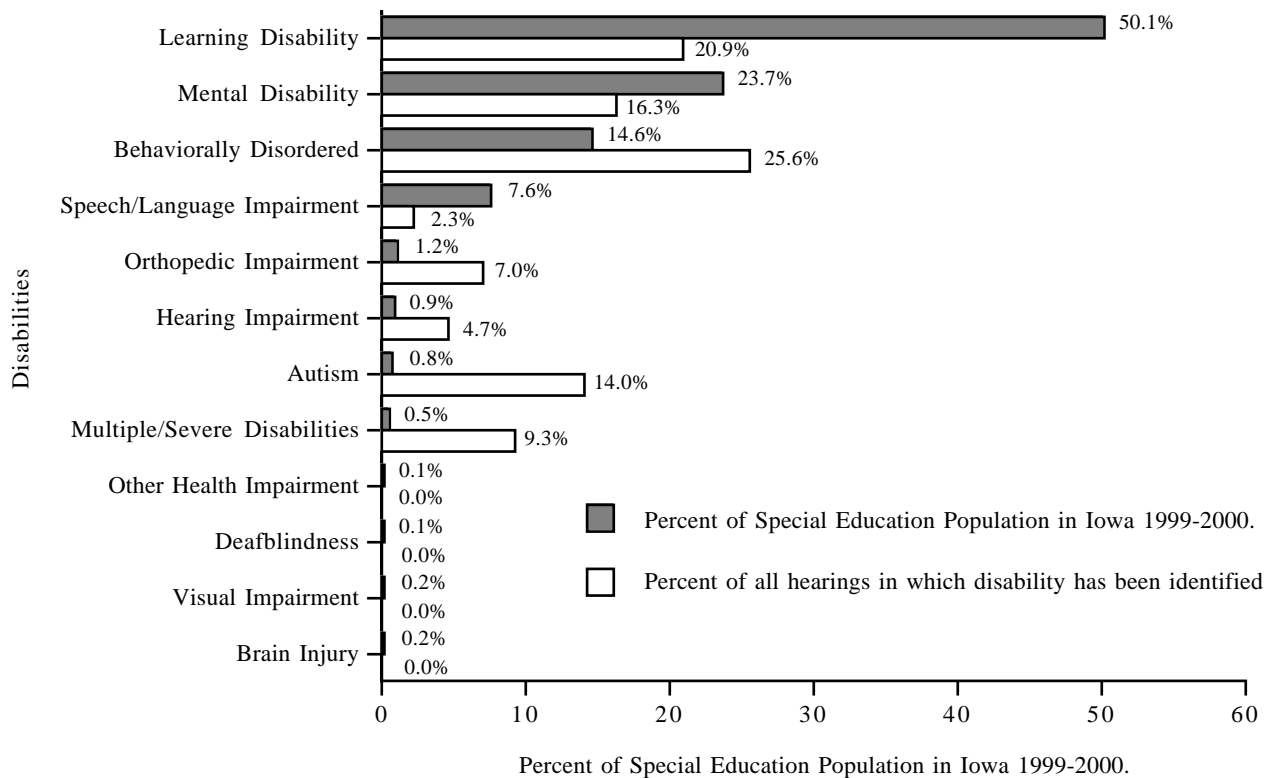
**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Note:** One case was missing.

Figure 22 (page 26) presents comparisons of the percentage of due process hearings requested for students in particular disability categories with the percentage of that disability category in the special education population. Students with learning disabilities, mental disabilities, and speech or language impairments were involved in due process hearings much less than would be expected from their representation in the special education population. Students who have behavioral disorders, hearing impairment, and orthopedic impairments were involved in due process hearings somewhat more often than would be expected, based on their representation in the special education population. Students with autism or multiple disabilities were involved in hearings considerably more often than would be expected.

**Figure 22**

**Occurrence of Due Process Hearings by Disability Category  
July 1, 1989 — June 30, 2001**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, IDEA Child Count.

## Section 2 Summary

Almost three-fourths (74 percent) of all hearings involved male students. Most hearings were held for students at the elementary level, with none filed or held for Early ACCESS (birth to three). Students who were labeled behaviorally disordered were most often involved in due process hearings (25.6 percent), although they made up 14.6 percent of the special education population. This was closely followed by students with learning disabilities (20.9 percent of hearings) who comprised 50.1 percent of the special education population.

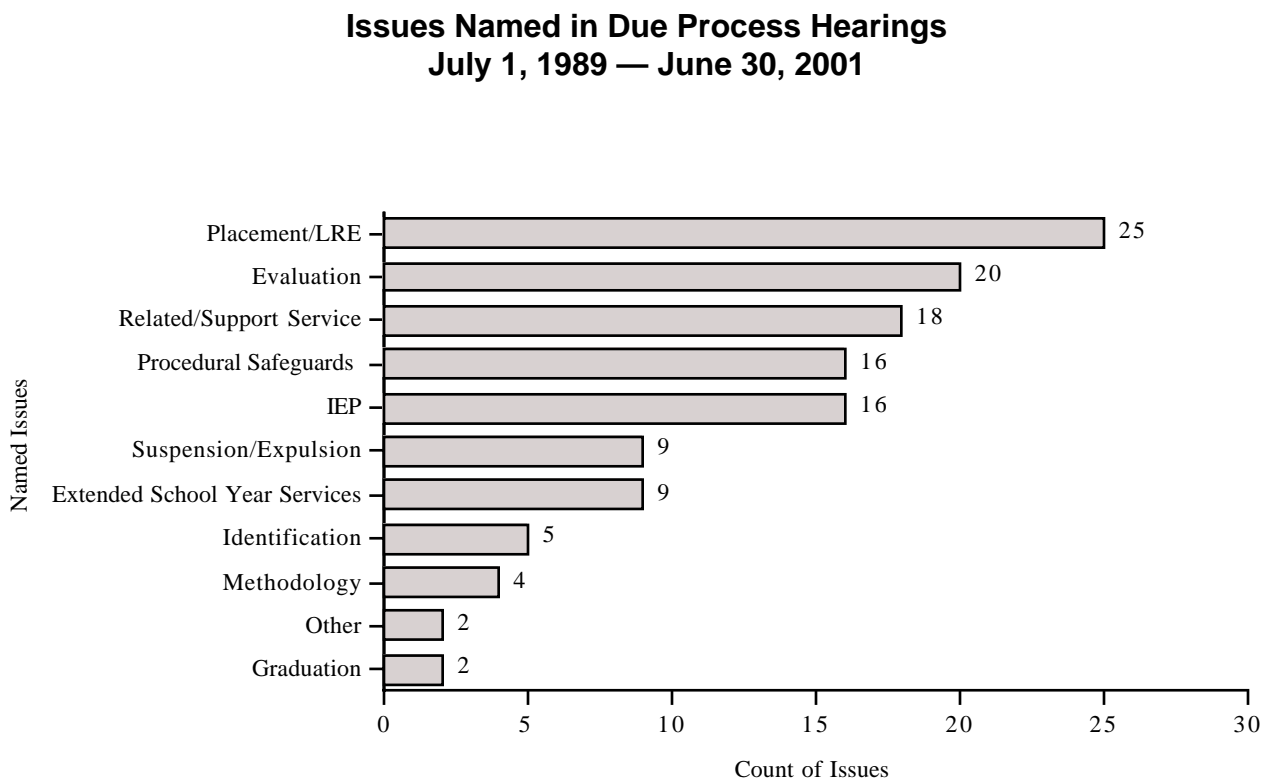
# Section 3

## Issues

In Section 1, general information was provided that showed the number of issues named in a hearing and a broad overview of whether the filing party (appellant) or the appellee prevailed on the total number of issues. This section provides information available after closer examination of the data to determine the specific type of issues named, the frequency rate of these issues, whether issues were related to gender, type of issue by school level, issues disaggregated according to AEA, and the prevailing party on individual issues.

Figure 23 shows the types of issues named in due process hearings. Issues of placement/least restrictive environment occurred most often. The issue of graduation was named least often in the hearings.

**Figure 23**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

<sup>2</sup>**Note:** Two issues are labeled as “Other.” One of these involved a Section 504 dispute and the other involved Compensatory Programming beyond the age of 21 years.

Table 5 shows the issues that have been named in due process hearings each year over the time period of July 1, 1989, through June 30, 2001. Because relatively few due process hearings were conducted each year in Iowa, definitive statements about trends were difficult to make. In general, however, the following can be observed: Issues of evaluation have occurred frequently. However, the occurrences do not demonstrate a clear trend, either increasing or decreasing. Issues of identification have been raised only five times over this time period.

**Table 5**

**Issues Named Yearly in Due Process Hearings  
July 1, 1989 — June 30, 2001**

Issues Named	Years Issue Count Took Place											
	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
Evaluation	2	1	5	3	0	5	0	0	0	1	3	0
Identification	0	1	0	0	0	2	1	0	0	0	0	1
Placement/LRE	4	1	3	2	3	1	2	3	2	2	1	1
Related/Support Service	2	1	1	2	2	3	2	0	0	4	0	1
IEP	2	3	2	1	2	2	0	2	0	1	1	0
Procedural Safeguards	1	4	1	2	2	3	1	1	0	0	0	1
Methodology	0	0	2	0	1	0	0	0	0	1	0	0
ESY Services	1	3	1	0	1	1	1	0	1	0	0	0
Other	0	0	0	0	1	1	0	0	0	0	0	0
Graduation	0	0	0	0	2	0	0	0	0	0	0	0
Suspension/Expulsion	1	1	0	3	0	2	0	1	1	0	0	0
<b>Total Issues</b>	<b>13</b>	<b>15</b>	<b>15</b>	<b>13</b>	<b>16</b>	<b>20</b>	<b>7</b>	<b>7</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>4</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

The issue of placement/least restrictive environment has occurred at least once, and frequently more than once, in every year during the time period displayed. The last five-year period appeared to show a decreasing trend in this issue.

The number of issues involving related/support services appears to have been decreasing since 1993-94. The exception to this was the 1998-99 school year, during which this issue was raised four times in due process hearings.

Although issues of IEP content do not show a clear trend in recent years, over the span of the 12 years studied, there appears to be an overall decrease in the number of IEP issues named in due process hearings.

The numbers of issues involving procedural safeguards appeared to have been generally declining over the most recent seven-year period, with the exception of the 2000-2001 year, which showed a slight increase.

Issues of methodology are rare, having occurred only one time in the last seven years, and only four times over the time period displayed.

Extended school year services were named infrequently, having only been an issue in one hearing over the last five years.

Graduation is rarely an issue in due process hearings in Iowa, having occurred only two times in the last 12 years, and not at all in the last seven years.

Issues involving suspension or expulsion have occurred sporadically over this twelve-year period; these were listed as issues several times in some years, and not at all in others. This has not been an issue in any of the last three years.

Table 6 indicates the type of issues identified in due process hearings held for male students versus those for female students. In general, male students are involved in due process hearings more often than female students. This is what would be expected, given that male students make up approximately 66 percent of the special education population in Iowa. Females are represented more often than males with the issues of related/support service and methodology. Female students have not been involved in any due process hearings involving the issue of identification during this time period.

**Table 6**

**Types of Issues Identified in Due Process Hearings by Gender  
July 1, 1989 — June 30, 2001**

Issues Named	Male Count	Female Count	Percent of Named Issues Occurring for:		Percent of ALL Issues Named for:	
			Males	Females	Males	Females
Evaluation	14	6	70	30	17	15
Identification	5	0	100	0	6	0
Placement/LRE	16	9	64	36	19	22
Related/Support Service	8	10	44	56	9	24
IEP	12	4	75	25	14	10
Procedural Safeguards	11	5	69	31	13	12
Methodology	1	3	25	75	1	7
ESY Services	7	2	78	22	8	5
Other	2	0	100	0	2	0
Graduation	1	1	50	50	1	2
Suspension/Expulsion	8	1	89	11	9	2

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.



Issues of evaluation, placement/least restrictive environment, IEP content, and procedural safeguards made up the largest proportion of issues named in cases involving males. The main issues for females were related/support services, placement/least restrictive environment, procedural safeguards, and evaluation. While suspension/expulsion made up only a small proportion of issues named by females, it made up a much larger proportion of issues named for males.

Table 7 indicates the issues involved in due process hearings categorized by the school level of the student involved. For students in early childhood programs, the issue most often named was that of extended school year services. This issue was also named often for students in elementary school. This issue did not appear at all for students in middle school/junior high school or high school. For students in elementary school, the issues most often heard were those of evaluation and placement/least restrictive environment. For students in middle school/junior high school, the main issues were suspension/expulsion and procedural safeguards, with evaluation issues closely following. For students in high school, the issue most often centered on placement/least restrictive environment. Issues involving the content of the IEP and related/support services were also named relatively frequently.

**Table 7**

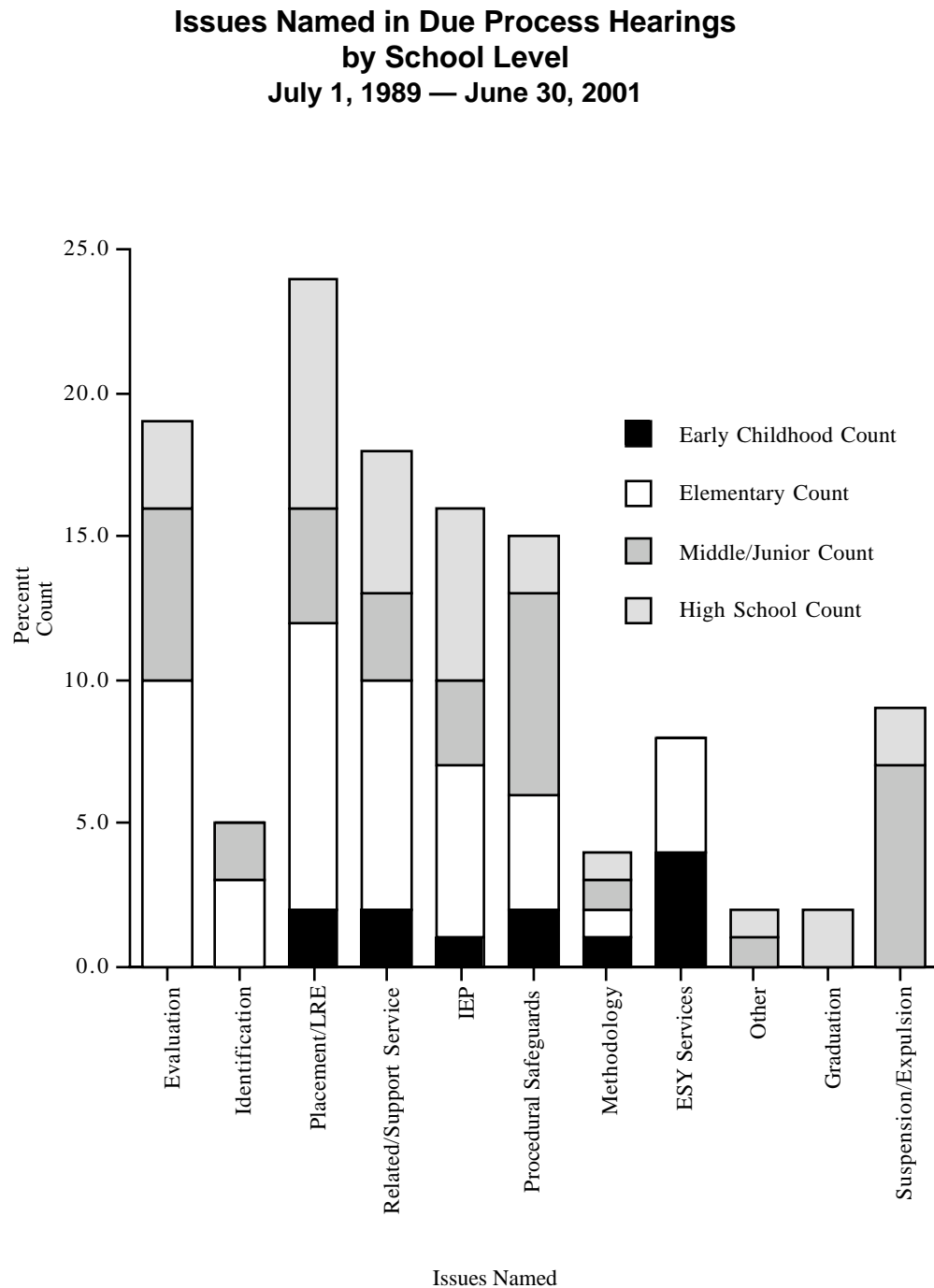
**Types of Issues Identified in Due Process Hearings  
by School Level of Involved Student  
July 1, 1989 — June 30, 2001**

<b>Issues Named</b>	<b>Early Childhood Count</b>	<b>Elementary Count</b>	<b>Middle/Junior High Count</b>	<b>High School Count</b>
Evaluation	0	10	6	3
Identification	0	3	2	0
Placement/LRE	2	10	4	8
Related/Support Service	2	8	3	5
IEP	1	6	3	6
Procedural Safeguards	2	4	7	2
Methodology	1	1	1	1
ESY Services	4	4	0	0
Other	0	0	1	1
Graduation	0	0	0	2
Suspension/Expulsion	0	0	7	2
<b>TOTALS</b>	<b>12</b>	<b>46</b>	<b>34</b>	<b>30</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 24 presents frequency of issues named by the school level of students involved in due process hearings.

**Figure 24**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Table 8 shows the relative number of issues named in the due process hearings within each AEA.

**Table 8**

**Relative Number of Issues Named in Due Process Hearings within each AEA  
July 1, 1989 — June 30, 2001**

Issues Named	AEA 1	AEA 2	AEA 5	AEA 6	AEA 7	AEA 9	AEA 10	AEA 11	AEA 12	AEA 15	AEA 16
Evaluation	0	1	2	0	0	1	0	8	4	2	2
Identification	0	0	1	0	0	0	0	2	0	1	1
Placement/LRE	1	3	2	1	0	1	2	6	4	1	4
Related/Support Service	0	0	1	0	1	2	4	2	3	2	3
IEP	0	2	3	0	2	1	1	2	2	2	1
Procedural Safeguards	1	0	1	0	2	1	1	2	2	2	4
Methodology	0	0	0	0	0	0	0	1	1	0	2
ESY Services	2	0	1	0	0	0	0	1	0	0	5
Other	0	0	0	0	0	1	0	1	0	0	0
Graduation	0	2	0	0	0	0	0	0	0	0	0
Suspension/Expulsion	0	0	2	0	0	0	0	1	3	3	0
<b>TOTAL</b>	<b>4</b>	<b>8</b>	<b>13</b>	<b>1</b>	<b>5</b>	<b>7</b>	<b>8</b>	<b>26</b>	<b>19</b>	<b>13</b>	<b>22</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**NOTES:** AEAs 3, 4, 13 & 14 are not reflected in this table because there were no hearings held in those AEAs.  
There was no AEA 8.

Table 9 and Figure 25 show the prevailing party on different types of issues. The local education agency prevailed more often on issues of evaluation, placement/least restrictive environment, related/support services, procedural safeguards, and extended school year services. In addition, the local education agency prevailed on every issue involving methodology and identification. The parent prevailed more often on issues of IEP content, and suspension/expulsion. The parent prevailed on the issue of graduation.

**Table 9**

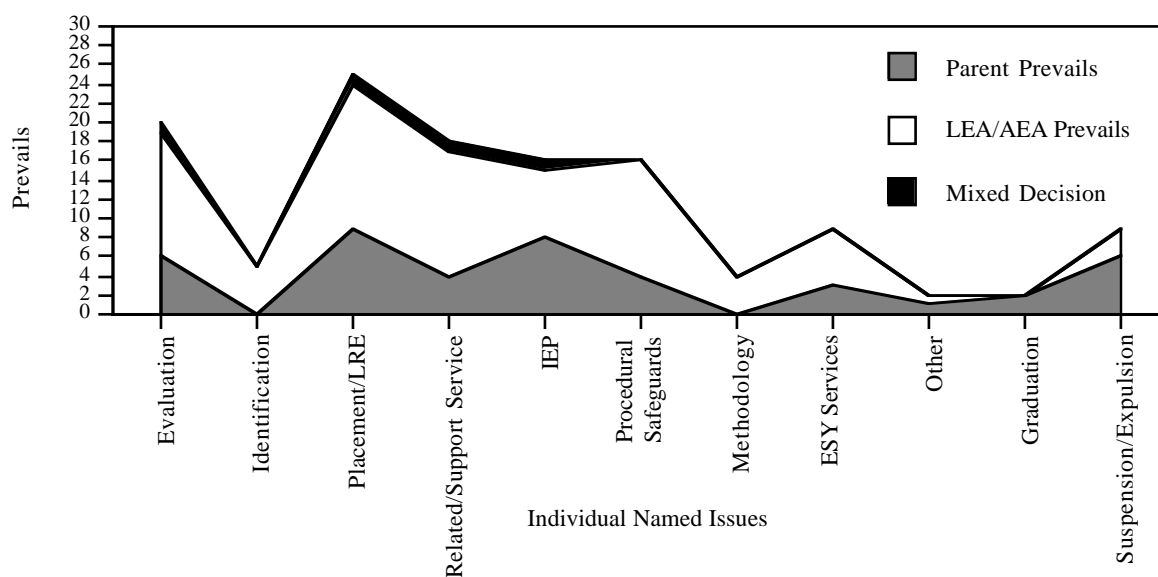
**Prevailing Party on Different Types of Issues by Number and Percent  
July 1, 1989 — June 30, 2001**

Issues Named	Parent Prevails	LEA Prevails	Mixed Decision	Percent of This Issue on Which:		
				Parent Prevails	LEA Prevails	Mixed Decision
Evaluation	6	13	1	30.0	65.0	5.0
Identification	0	5	0	0.0	100.0	0.0
Placement/LRE	9	15	1	36.0	60.0	4.0
Related/Support Service	4	13	1	22.2	72.2	5.6
IEP	8	7	1	50.0	43.8	6.3
Procedural Safeguards	4	12	0	25.0	75.0	0.0
Methodology	0	4	0	0.0	100.0	0.0
ESY Services	3	6	0	33.3	66.7	0.0
Other	1	1	0	50.0	50.0	0.0
Graduation	2	0	0	100.0	0.0	0.0
Suspension/Expulsion	6	3	0	66.7	33.3	0.0
<b>TOTAL</b>	<b>43</b>	<b>79</b>	<b>4</b>	<b>34.1</b>	<b>62.7</b>	<b>3.2</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Figure 25**

**Prevailing Party on Individual Issues by Parent or LEA/AEA  
July 1, 1989 — June 30, 2001**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Table 10 and Figure 26 show the prevailing side on different types of issues. The appellee prevailed more often on issues of placement/least restrictive environment, identification, related/support services, procedural safeguards, and extended school year services. The appellee prevailed on every issue of methodology. The appellant prevailed more often on issues of evaluation, IEP content, and suspension/expulsion. The appellant prevailed on every issue of graduation.

**Table 10**

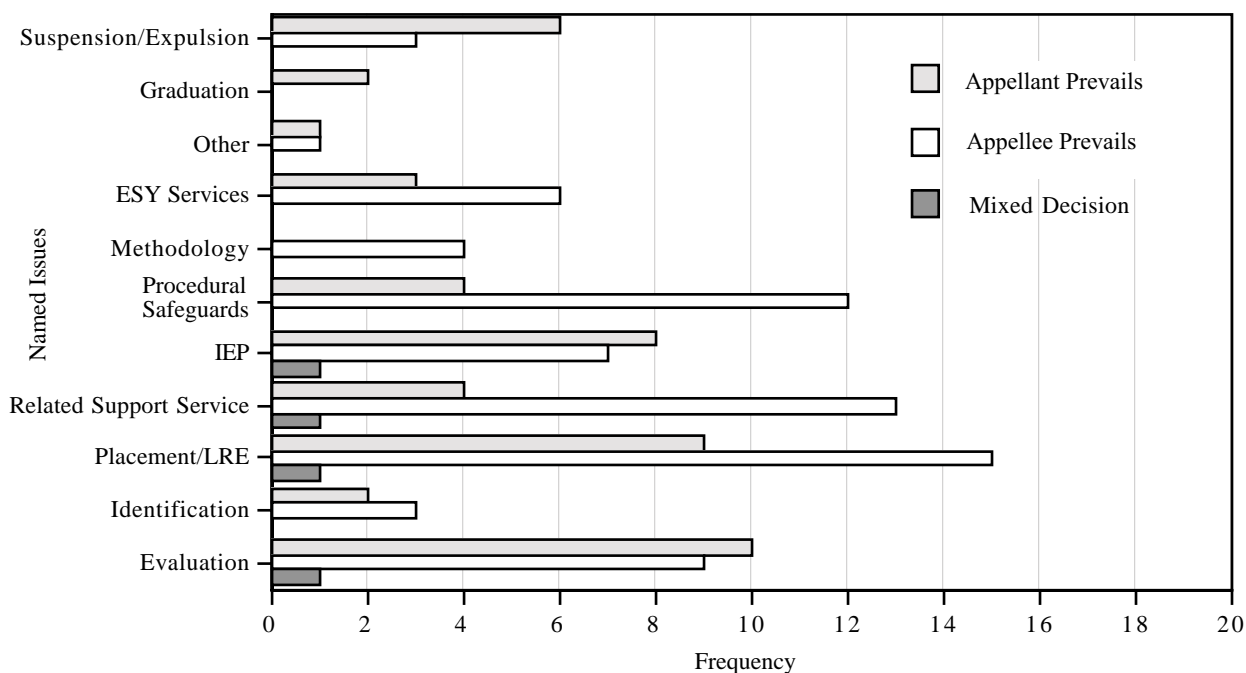
**Prevailing Side on Different Types of Issues by Number and Percent  
July 1, 1989 — June 30, 2001**

Issues Named	Appellant Prevails	Appellee Prevails	Mixed Decision	Percent of This Issue on Which:		
				Appellant Prevails	Appellee Prevails	Mixed Decision
Evaluation	10	9	1	50.0	45.0	5.0
Identification	2	3	0	40.0	60.0	0.0
Placement/LRE	9	15	1	36.0	60.0	4.0
Related/Support Service	4	13	1	22.2	72.2	5.6
IEP	8	7	1	50.0	43.8	6.3
Procedural Safeguards	4	12	0	25.0	75.0	0.0
Methodology	0	4	0	0.0	100.0	0.0
ESY Services	3	6	0	33.3	66.7	0.0
Other	1	1	0	50.0	50.0	0.0
Graduation	2	0	0	100.0	0.0	0.0
Suspension/Expulsion	6	3	0	66.7	33.3	0.0
All Issues	49	73	4			

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Figure 26**

**Prevailing Side on Individual Issues by Appellant or Appellee  
July 1, 1989 — June 30, 2001**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

## Section 3 Summary

Because three-fourths of all hearings concerned male students (although they presently make up 66 percent of the special education population in Iowa), a greater total number of issues were identified for males. The issue of placement/least restrictive environment (LRE) occurred most often overall in due process hearings (19.8 percent of all identified issues) held in the state of Iowa from July 1, 1989, through June 30, 2001. Placement/LRE was the primary issue named for males, while for females, the issue was related/support services.

The type of issues named in the hearing varied by the school level of the student involved. The primary issue identified at the early childhood level was extended school year services; at the elementary level it was both evaluation and placement/LRE; at the middle/junior high level it was procedural and suspension/expulsion; and at high school level it was placement/LRE.

The hearing issues were disaggregated according to the jurisdiction of the AEA when the hearing was held. During the time frame of the report 13 AEAs had hearings; two AEAs did not.

The prevailing party on different types of issues was examined. The LEA prevailed on 62.7 percent of the issues, the parent prevailed on 34.1 percent, and 3.2 percent were mixed.

The issues at the hearing were examined to determine whether the appellant or the appellee prevailed. (The appellant is the party that filed the request for the hearing.) The appellant prevailed more on issues involving evaluation, IEP content, graduation, and suspension/expulsion.

# Section 4

## Appeals to Higher Court

The Office for Special Education Programs (OSEP), with the United States Department of Education, requests that states examine their appeal rates after hearing decisions are rendered by ALJs. One reason is to determine how many appeals are filed following ALJ decisions. In addition, OSEP wants states to scrutinize the rate with which ALJ decisions are overturned.

Table 11 and Figure 27 present the number of due process hearings appealed to a state or federal court each year. Iowa had a relatively small number of due process hearings each year, and few of those were appealed. Beginning with the 1997-98 school year, and continuing to the 2000-2001 school year, no due process hearings were appealed.

**Table 11**

### Due Process Hearings Appealed to a State or Federal Court 1989 — 2000

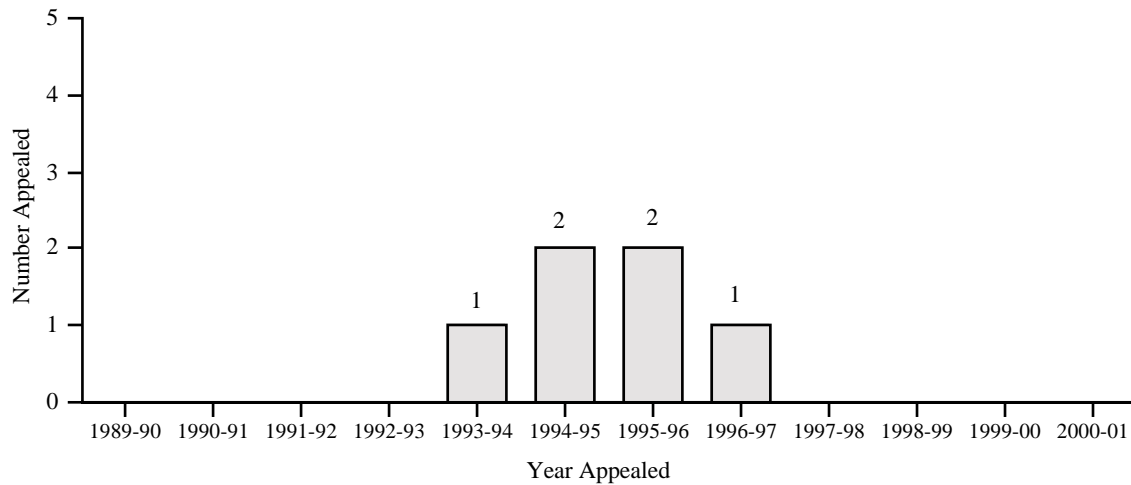
Year	Hearing Decisions Rendered	Number Appealed	Percent Appealed
1989-90	6	0	0
1990-91	4	0	0
1991-92	6	0	0
1992-93	5	0	0
1993-94	5	1	20
1994-95	6	2	33
1995-96	4	2	50
1996-97	2	1	50
1997-98	2	0	0
1998-99	3	0	0
1999-00	3	0	0
2000-01	4	0	0
<b>Total</b>	<b>50</b>	<b>6</b>	<b>12</b>

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.



**Figure 27**

**Number of Administrative Law Judge Decisions Appealed to District Court**  
**Original ALJ Decisions Rendered July 1, 1989 — June 30, 2001**

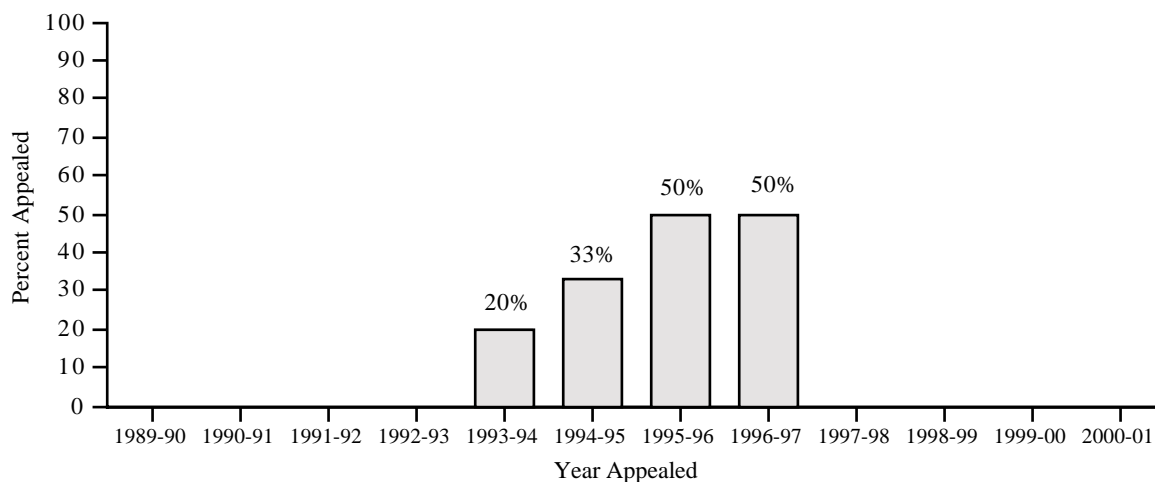


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 28 shows the percentage of due process hearings appealed to the United States District Court each year.

**Figure 28**

**Percent of Administrative Law Judge Decisions Appealed to District Court**  
**Original ALJ Decisions Rendered 7/1/1993 — 6/30/2000**

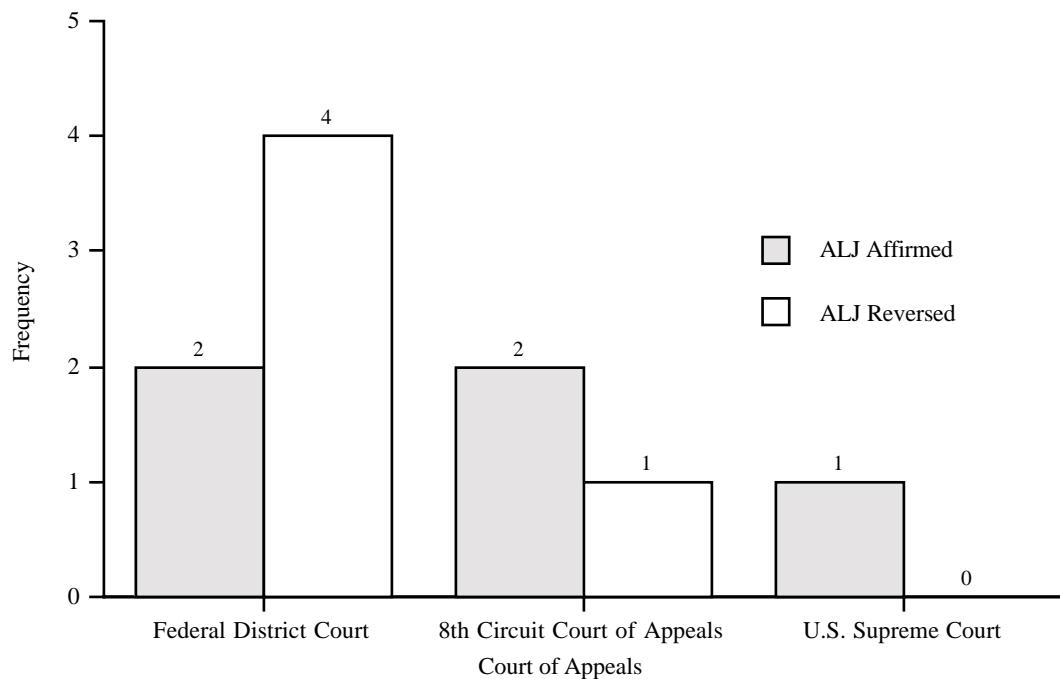


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 29 provides information regarding due process hearings that have been appealed to a state or federal court. For cases that were appealed to U.S. Court, the first level is the Federal District Court. At this level, the original decision of the ALJ was reversed more often than it was affirmed. For cases appealed further, to the Eighth Circuit Court of Appeals, the original decision of the ALJ was affirmed more often than it was reversed. During this time period, only one case in Iowa was appealed to the level of the United States Supreme Court. In this case the original decision of the ALJ was affirmed.

**Figure 29**

**Administrative Law Judge Decisions: Reversed or Affirmed**  
**Original ALJ Decisions Rendered July 1, 1989 — June 30, 2001**

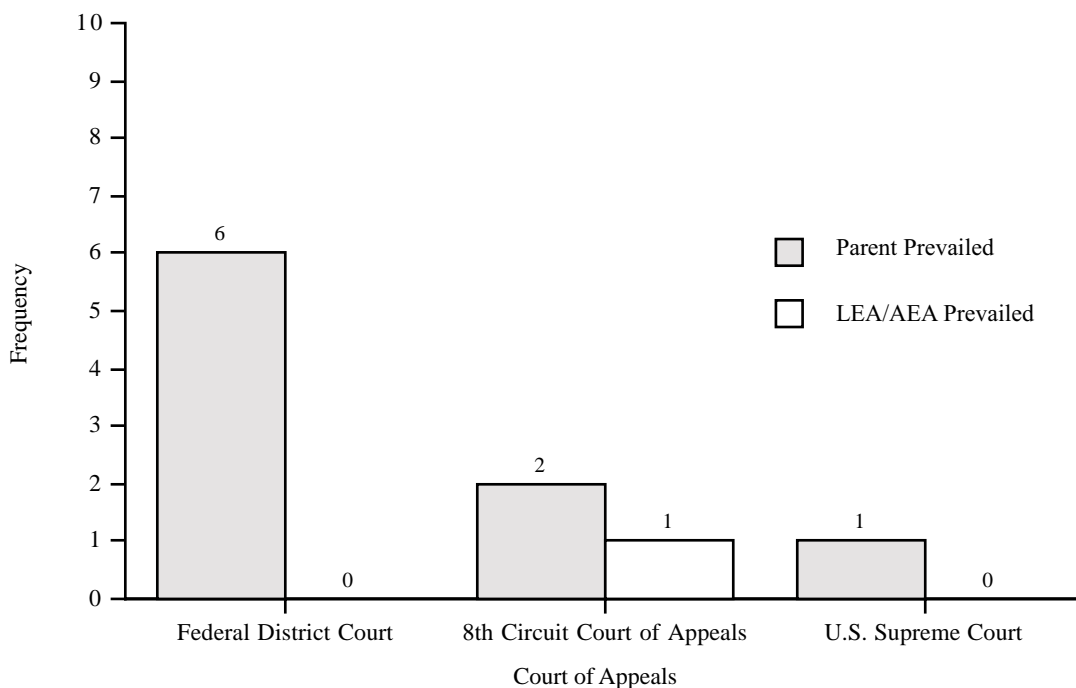


**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

Figure 30 provides information regarding the prevailing party when due process hearings were appealed to a state or federal court. For cases that are appealed to the U.S. Court, the first level is the Federal District Court. The parent prevailed in all cases appealed to this level during this time period in Iowa. For the three cases appealed to the Eighth Circuit Court of Appeals, the parent prevailed in two cases and the local education agency prevailed in one case. Only one case was appealed to the U.S. Supreme Court during this time period. In this case, the parent prevailed.

**Figure 30**

**Appeals of Administrative Law Judge Decisions: Prevailing Party**  
Original ALJ Decisions Rendered July 1, 1993 — June 30, 2000



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

When a decision is rendered by the ALJ, it may be appealed to a U.S. District Court. The first level is Federal District Court. The decision reached at this level may then be appealed to the circuit court of appeals. In Iowa, this is the Eighth Circuit Court of Appeals. Finally, a decision at this level may be appealed to the U.S. Supreme Court. The parties involved in the dispute may choose to continue appealing until all court levels have been exhausted, or may choose to terminate the appeals process before all appeals have been exhausted. Table 12 and Figure 31 show the prevailing party at the highest level of appeal pursued for each hearing. During the time period reviewed, the parent prevailed the majority of the time (five cases, 83.3 percent).

**Table 12**

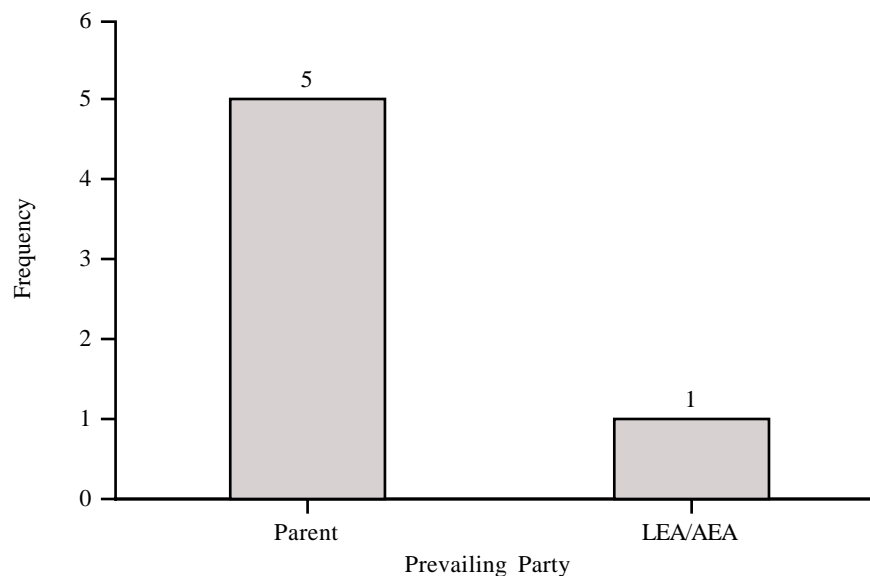
**Decisions at Highest Level of Appeal: Prevailing Party**  
**Original ALJ Decisions Rendered July 1, 1993 — June 30, 2000**

Case No.	SE No.	Student	Date of ALJ Decision	Court Appealed to	Date Appeal Decision Rendered	Party Prevailing on Appeal	Original ALJ Decision Affirmed or Reversed on this Appeal
100	101	Erin M.	4/11/94	Federal District Court	2/10/95	Parent	Affirmed
105	117	Joseph S.	10/18/94	Federal District Court	3/4/96	Parent	Reversed
107	98	Garret F.	12/16/94	Federal District Court	3/22/96	Parent	Affirmed
107	98	Garret F.	12/16/94	8th Circuit Ct of Appeals	2/17/97	Parent	Affirmed
107	98	Garret F.	12/16/94	U.S. Supreme Court	3/3/99	Parent	Affirmed
111	160	Robert T.	1/29/96	Federal District Court	9/30/97	Parent	Reversed
111	160	Robert T.	1/29/96	8th Circuit Ct of Appeals	4/19/99	Parent	Reversed
112	161	Kratisha H.	4/25/96	Federal District Court	5/20/98	Parent	Reversed
112	161	Kratisha H.	4/25/96	8th Circuit Ct of Appeals	5/21/99	LEA	Affirmed
115	185	Amanda S.	5/22/97	Federal District Court	2/5/98	Parent	Reversed

**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

**Figure 31**

**Decisions at Highest Level of Appeal: Prevailing Party**  
**Original ALJ Decisions Rendered July 1, 1993 — June 30, 2000**



**Source:** Iowa Department of Education, Bureau of Children, Family and Community Services, Staff Files.

## Section 4 Summary

The number of due process hearings appealed to a state or federal court was examined. During the 12 years examined by this report, 50 hearings were held. During this period, six hearings were appealed. Of the six hearings appealed to district court, three continued appeal to the Eighth Circuit Court, and one of these continued on to the U.S. Supreme Court. In the final appeal, the ALJ's decision was affirmed in three cases and reversed in three cases. The parent prevailed on five of the six hearings appealed (83.3 percent).

# Summary

## Conclusions of the Study

Iowa had a low number of due process hearings, from two to four hearings each year over the last five years. Parents initiated 88 percent of all hearings held and prevailed on 34 percent of the 126 issues identified in the 50 hearings held for the period of this study. Although parties in dispute named the issue of placement/least restrictive environment most frequently, the last five-year period showed this issue to be decreasing. Most issues were identified sporadically over the 12-year period examined. Therefore, trends were difficult to identify.

The impact of SEA hearing decisions on school district practices as a system is unclear. Most districts and AEAs used these few decisions to provide inservice to their staffs, according to informal information heard. For the most part, the three federal district and two circuit level decisions from Iowa generally were considered to be too child specific to lend a lot of specific guidance for most districts, and perhaps were viewed no differently from the SEA level decisions. One possible exception was an Eighth Circuit Court decision and its ruling that one of Iowa's state laws was more stringent than found in IDEA '97. Obviously, the U.S. Supreme Court decision (1999) impacted the entire state. In most instances, state inservice needs are not identified by relying on the issues involved in hearing decisions. However, the department will continue to review the results of hearings to determine when inservice leadership should be assumed by the state.

Special education is a specialized area of law, and parents have a small pool of experienced attorneys in special education law from which to draw. Fifty-three percent of parents were represented by an attorney who had never been involved in a special education hearing. However, this is changing as more parents access the Legal Center for Special Education, a nonprofit organization involved in about 80 percent of all preappeals, mediations, and hearings over the past several years.

Presently, Iowa has contracts with four administrative law judges (ALJs), all of whom are affiliated with universities in the field of special education. Historically, the attrition rate has been low, with the present ALJs serving since 1986, 1988, 1989, and 1999. A total of seven ALJs rendered 50 decisions from 1989-2001.

The department will continue to contract with university staff employed in special education and will continue its obligation to provide support to the ALJs in order for them to stay current with special education law and issues impacting students with disabilities.

# Alternate Forms of Dispute Resolution

The department recognizes that there must be multiple formats for encouraging dispute resolution, and these must occur at the earliest point in time possible. When the IDEA Amendments of 1997 required all states to offer mediation whenever a due process hearing was requested, this signaled legislative intent to “decrease the use of costly and divisive due process proceedings and civil litigation.” Congress further expressed a belief that hearings should not be the norm for resolving disputes under IDEA. In the Analysis of Comments and Changes section of IDEA 1997, the Office of Special Education Programs (OSEP) wrote:

The statute clearly states that the option of mediation must be available whenever a due process hearing is requested... However, States or other public agencies are strongly encouraged to offer mediation *or other alternative systems of dispute resolution prior to the filing of a request for a due process hearing* [emphasis added], and whenever a dispute arises. (p.12611)

As stated, one alternate form of dispute resolution required under the IDEA Amendments of 1997 is the offer of mediation whenever a due process hearing is requested, but prior to the time that the hearing is held. Mediation has been available in Iowa since 1976, making Iowa the third state in the nation to offer this option.

Another option for dispute resolution in Iowa is the preappeal conference. This was instituted around 1987 as a pilot project to encourage early resolution of disputes by offering a mediation process prior to any party requesting a hearing. Prior to that time, mediation was offered only after a hearing was requested. In 1995 the preappeal conference requirements were written into the *Iowa Administrative Code*.

Yet another option for dispute resolution in Iowa is the Resolution Facilitator process. In March 2000 all of the AEAs agreed to adopt the statewide Resolution Facilitator process. This was an outgrowth of the state offering mediation training (1995) to representatives from each of the 15 AEAs, followed by providing funding for mediation training (1997) (Introductory Mediation, Advanced Part I, Advanced Part II, and Refresher course) for all AEAs desiring it. This training continues to be offered.

Has the number of due process hearings been reduced because Iowa has offered mediation since 1976, offered the preappeal conference since 1987, formalized the preappeal conference process in 1995, and offered mediation training to AEAs since 1995? Did the Resolution Facilitator process begun in 2000 help?

The answer to all of the above appears to be a resounding “Yes.” According to a national preliminary report, which examined the number of hearings, mediations, and formal written complaints per each 10,000 special education students in the United States, Iowa had the lowest complaint ratio in the nation. In addition, when the state data were examined it showed the number of hearings requested and the number of hearings held decreased when comparing five-year blocks of time. As the number of hearings decreased, the number of preappeal conferences increased, a trend generally considered to be positive. According to data collected, but not included in this study, 92 percent of preappeal conferences are resolved, with a written agreement being the outcome.

## Communication and Collaborative Relationships

The state recognizes that the above factors are not the only variables helping Iowa achieve its preferred Number One ranking. Certainly, the Parent-Educator Connection, the Parent Training and Information Center, the Legal Center for Special Education, the desire of many educators and parents, as well as attorneys employed by districts, AEAs, and parents have played an important role in this outcome.

The Iowa Department of Education (DE) has been committed for many years to fostering collaborative relationships between parents of children with disabilities and the personnel hired by districts and area education agencies in which the parents reside. One example of that commitment has been the funding of the Parent-Educator Connection, a statewide network of families and educators whose mission is to “promote effective partnerships through communication, education, and collaboration.”

Educators and parents need skills that encourage open communication with each other and the ability to help defuse adversarial relationships. Since 1995, the DE has offered funding so that AEAs can provide *Creating Solutions: Skills to Effectively Resolve Differences between Parents and Educators (for Parents)*. Parents need to have a knowledge base not only about their rights but also have a fundamental understanding of special education law.

The DE will continue to provide funding for *Creating Solutions: Skills to Effectively Resolve Differences between Parents and Educators (for Parents)*. Also, the department and the Parent-Educator Connection will continue to assist parents and educators with opportunities to receive parental rights information and pertinent special education law updates and information.

## Data Management and Analysis

States are encouraged to have an integrated data system across complaints, mediation, due process and other conflict resolution processes in place. In a briefing paper of the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) entitled *Beyond Mediation: Strategies for Appropriate Early Dispute Resolution in Special Education* (October 2002) the importance of having such a system is explained:

The Consortium for Appropriate Dispute Resolution in Special Education (CADRE) and its partner NASDSE [National Association of State Directors of Special Education] are encouraging use of an integrated ADR database approach that can help gather the information needed to determine the most effective strategies for resolving dispute differences related to special education. Our focus must be on the implementation of research-based, effective programs and support for children and youth with disabilities, rather than on procedural minutia and inflexible positions. Processes that invite collaboration and informed partnerships hold the greatest promise for the development of quality education programs.



According to a presentation given by Judy and Howard Schrag at the Second Symposium of CADRE (2002), Iowa is one of two states in the nation having an integrated database. The department will continue using this type of system.

## Future Directions

The state of Iowa is pleased with the national trend of moving toward early dispute resolution mechanisms and recognizing the limitations of due process hearings because of time commitments, expense, and especially because of the possibility of long-term negative relationships between families and district staff.

The department will continue its pursuit of offering effective early dispute resolution processes. Data will continue to be gathered and analyzed to determine the effectiveness of such processes. Recognizing that due process hearings *may* be an appropriate mechanism for resolving some differences between parents and school personnel, the emphasis will continue to be on helping foster collaborative partnerships between parents and school and AEA personnel.

The department will continue to provide opportunities to strengthen the Resolution Facilitator process throughout the state, e.g., provide funding for mediation training via the AEAs and provide written materials. Collaborative relationships will be maintained with various constituencies, such as the AEA special education directors, the Special Education Advisory Panel, the Parent-Educator Connection, the Parent Training and Information Center, the Legal Center for Special Education, and Protection and Advocacy.

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